

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-23649-rdd

4 - - - - - x

5 In the Matter of:

6

7 PURDUE PHARMA L.P.,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 December 4, 2019

17 2:03 PM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: SHEA/JUSTIN

1 HEARING re

2 Motion to Authorize/Motion of Debtors for Entry of an Order
3 Authorizing (I) Debtors to (A) Pay Pre-Petition Wages,
4 Salaries, Employee Benefits and Other Compensation and (B)
5 Maintain Employee Benefits Programs and Pay Related
6 Administrative Obligations, (II) Employees and Retirees to
7 Proceed with Outstanding Workers Compensation Claims and
8 (III) Financial Institutions to Honor and Process Related
9 Checks and Transfers (ECF 6)

10

11 Objection of the United States Trustee (ECF 134)

12

13 Nevada Counties and Municipalities' Joinder to the Objection
14 of the United States Trustee (ECF 190)

15

16 The Commonwealth of Pennsylvania's Joinder to the Objection
17 of the United States Trustee (ECF 196)

18

19 Joinder/Objection by the Ad Hoc Group of Non-Consenting
20 States (ECF 197)

21

22 Joinder of the State of Arizona to the Objection of the
23 United States Trustee (ECF 201)

24

25

1 HEARING re (Cont'd.)

2

3 Letter of Linda A. Lacewell, Superintendant of New York

4 State Department of Financial Services (ECF 99)

5

6 Letter of Dan Colucci (ECF 103)

7

8 Letter of John Taormina (ECF 327)

9

10 Statement of the Ad Hoc Group of Non-Consenting States

11 Maintaining Its Objection to Purdue's Wage Motion (ECF 557)

12

13 State of Maryland's Additional Statement (ECF 559)

14

15 Debtors' Omnibus Reply (ECF 235)

16

17 Debtors' Supplemental Omnibus Reply (ECF 556)

18

19

20

21

22

23

24

25 Transcribed by: Lorie Cook

1 A P P E A R A N C E S :

2

3 AKIN GUMP STRAUSS HAUER & FELD

4 Attorneys for Official Creditors' Committee

5 One Bryant Park

6 Bank of America Tower

7 New York, NY 10036-6745

8

9 BY: Arik Preis, Esquire

10

11 Schulte Roth & Zabel LLP

12 Ad Hoc Group of Hospitals

13 919 Third Avenue

14 New York, NY 10022

15

16 BY: Kristine Manoukian, Esquire

17

18 DAVIS POLK & WARDWELL LLP

19 Debtors

20 450 Lexington Avenue

21 New York, NY 10017

22

23 BY: Marshall S. Huebner, Esquire

24

25

1 A P P E A R A N C E S (Cont'd):

2

3 U.S. DEPARTMENT OF JUSTICE - OFFICE OF THE UNITED STATES
4 TRUSTEE

5 Attorneys for United States Trustee

6 U.S. Federal Office Building

7 201 Varick Street, Suite 1006

8 New York, NY 10014

9

10 BY: Paul K. Schwartzberg, Esquire

11

12 PILLSBURY WINTHROP SHAW PITTMAN LLP

13 Debtors

14 31 West 52nd Street

15 New York, NY 10019-6131

16

17 BY: Andrew Troop, Esquire

18

19 DAVIS POLK & WARDWELL LLP

20 Debtors

21 450 Lexington Avenue

22 New York, NY 10017

23

24 BY: James I. McClammy, Esquire

25

1 A P P E A R A N C E S (Cont'd):

2

3 MASSACHUSETTS ATTORNEY GENERAL'S OFFICE

4 Debtors

5 False Claims Division

6 Office of the Attorney General

7 One Ashburton Place

8 Boston, MA 02108

9

10 BY: Gillian Feiner, Esquire

11

12 SPEARS & IMES LLP

13 Attorneys for Dr. Landau

14 51 Madison Avenue

15 New York, NY 10010

16

17 BY: Linda Imes, Esquire

18

19

20

21

22

23

24

25

		DX	CX	RDX	RCX
1	WITNESSES:				
2	JON LOWNE				
3	By Mr. Schwartzberg	45		75	
4	By Mr. Troop		60		
5	By Mr. McClammy			66	
6					
7	JOSEPHINE GARTRELL				
8	By Mr. Schwartzberg	77			
9	By Mr. Troop		80		
10	By Mr. McClammy			86	
11	By Mr. Troop				89
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

1 P R O C E E D I N G S

2 THE COURT: Okay. Good afternoon, In Re Purdue
3 Pharma, L.P., et al.

4 MR. PREIS: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. PREIS: Arik Preis from Akin Gump Strauss
7 Hauer & Feld on behalf of the Official Creditors' Committee.
8 First of all, thank you to Your Honor and Your Honor's
9 chambers for --

10 THE COURT: You got here.

11 MR. PREIS: -- accommodating, yes. We do
12 appreciate it.

13 THE COURT: On time.

14 MR. PREIS: Yes. So thank you, very much for
15 that.

16 THE COURT: It's fine.

17 MR. PREIS: Your Honor, just before we start with
18 the actual agenda today, I wanted to note for you last night
19 there's an Ad Hoc Group of Hospitals that filed a Rule 2019
20 statement, and they just wanted to speak for two minutes at
21 the beginning of this hearing just to introduce themselves
22 and let you know kind of who they are, and then we can go on
23 with the agenda if you --

24 THE COURT: Okay. They're not appearing on this
25 particular matter --

1 MR. PREIS: No, no.

2 THE COURT: -- they just want to introduce
3 themselves.

4 MR. PREIS: Correct.

5 THE COURT: All right. That's fine.

6 MR. PREIS: Thank you, Your Honor.

7 MS. MANOUKIAN: Good afternoon, Your Honor.

8 Kristine Manoukian, Schulte Roth & Zabel, appearing for the
9 Ad Hoc Group of Hospitals. We appreciate the opportunity to
10 speak to you briefly.

11 As Mr. Preis noted, we did file the 2019 last
12 night, which goes into greater detail about who we are, the
13 nature and the magnitude of the hospitals claims, and the
14 damages that they have suffered as a result of the opioid
15 crisis. But I did want to take this opportunity to
16 introduce our group to the court and just to highlight a
17 couple key points.

18 The Ad Hoc Group of Hospitals as the 2019
19 statement states currently consists of over 550 hospitals
20 across the country, which represents approximately 10
21 percent of the hospitals in the United States. These
22 hospitals, including the members of the Ad Hoc Group hold
23 approximately over 303 billion dollars of claims against
24 debtors that arise from among other things, RICO violations
25 and state law equivalents, negligence, nuisance, conspiracy,

1 and other causes of action.

2 If the RICO or state law equivalent violations or
3 allegations are proven to be successful, the hospitals will
4 have trouble damages. And, of course, we're aware that
5 there are other parties that have asserted similar claims
6 and allegations, and if those are successful, they may also
7 assert trouble damages as well.

8 THE COURT: I'm sorry. What was the number again?

9 MS. MANOUKIAN: 303 billion dollars.

10 THE COURT: Okay.

11 MS. MANOUKIAN: I recognize it is a staggering
12 number.

13 THE COURT: All right.

14 MS. MANOUKIAN: But at the appropriate time the Ad
15 Hoc Group of Hospitals will be able to demonstrate how that
16 number was arrived.

17 THE COURT: Okay.

18 MS. MANOUKIAN: As the Creditors' Committee notes
19 in its 2019 statement and has continued to note throughout
20 these cases, the debtor's creditors include a substantial
21 number of private litigation claimants with very significant
22 claims. It is important to note that the vast majority of
23 the hospitals are not represented by the states and
24 municipalities that have brought similar cases against the
25 debtors.

1 Nevertheless, as much as any other litigation
2 claimant, hospitals directly and monetarily bear the brunt
3 of the opioid crisis. They have incurred and continue to
4 incur millions of dollars in damages associated with the
5 expense of uncompensated and undercompensated care that they
6 must provide to opioid-affected patients.

7 Hospitals have been uniquely impacted by the
8 opioid epidemic that in part has been caused by actions or
9 admissions of the debtors. The reason for that, Your Honor,
10 is that the hospitals are required to treat patients with
11 opioid-related conditions.

12 Among the damages that have been caused to the
13 hospitals by this epidemic are their substantial increased
14 operational costs resulting from treatments that are more
15 complex and expensive than they otherwise would be when the
16 patient's not opioid affected, increased patient admissions,
17 and increased psychiatric care.

18 We did touch upon the amount of the claim, and as
19 I mentioned, at the appropriate time we will demonstrate how
20 that number was calculated. But unlike creditors with soft
21 money claims, the hospitals are actually capable of
22 demonstrating the actual cost that they have incurred in
23 connection with treating opioid-affected patients. The cost
24 of the opioid epidemic to the hospitals has been, and will
25 continue to be for the foreseeable future, enormous.

1 In sum, Your Honor, hospitals are fighting
2 effectively for their survival in the face of this epidemic
3 and are incurring demonstrable and significant damages.
4 While admittedly we're a little late to these cases, there
5 is a hospital on the Creditors Committee, and the Ad Hoc
6 Group of Hospitals intends to get more actively involved in
7 and work constructively with the debtors, the committee, and
8 the other stakeholders in these cases.

9 Thanks, Your Honor, for giving us the opportunity
10 to introduce ourselves.

11 THE COURT: Okay, thanks.

12 MR. HUEBNER: Good afternoon, Your Honor. For the
13 record, I am Marshall Huebner of Davis Polk & Wardwell, LLP
14 on behalf of the debtors. Obviously I take no view on the
15 assertions of claim and size and damage, but, you know, it's
16 another hearing, so we have to have a new committee and
17 we'll obviously work with where we go from there.

18 Your Honor, a couple of very quick precatory
19 things on my end. Number one, as The Court of course surely
20 remembers, on November 6 the injunction order -- the
21 injunction hearing was held that included the voluntary
22 agreed form of self-injunction. I just wanted to give The
23 Court comfort on a couple of things to show you how
24 seriously the debtors continue to take everything in this
25 case, but among other things those types of things.

1 By November 14, every single Purdue employee,
2 every one, had received a copy of the voluntary injunction
3 along with a memorandum outlining its key aspects. It was
4 also put on the employee website. The company has conducted
5 multiple -- I think we're up to nine or ten by now -- in-
6 person and WebEx training sessions with all the relevant
7 departments and people with over 100 people getting the
8 extended training sessions, the self-injunction. The
9 external communications consultants have gotten those. The
10 board of directors is getting a training session, and there
11 are -- I have a whole page of follow-up steps I'm not going
12 to review, as I don't think that's necessary.

13 We do want to give The Court comfort that The
14 Court and all parties deserve that. You know, when we say
15 we're going to do things, we try to do them acidulously and
16 seriously with alacrity, and I believe that that
17 characterizes the company's actions with respect to the
18 voluntary self-injunction.

19 Number two, Your Honor, just to get a detail out
20 of the way, the court, as I'm sure is the case, since it's
21 always the case with the court, has probably read the
22 proposed order and noticed the American Express black line
23 and language in there.

24 Just as a quick reminder, 'cause I actually didn't
25 remember it, shame on me, that of the October 16 final wages

1 order on lots of other topics, had a paragraph nine that
2 related to American Express, which was the card purchasing
3 program. It provided that they don't have to continue with
4 the program. They can shut it down unless we waive
5 avoidance actions against them.

6 And there was originally a deadline of November 20
7 for us to get this waiver. They then extended it to
8 December 5. We then worked with the Creditors' Committee
9 and gave them the details on the American Express card
10 purchasing program, and the debtors and the committee got
11 comfortable with the proposed waiver.

12 And so if you look in paragraph three of the
13 proposed supplemental final order, it's the same as the old
14 paragraph nine from October 16 with only two changes. One,
15 it now says the debtors are authorized as opposed to
16 authorized but not directed, whatever.

17 And then two, the language that required us to go
18 get the avoidance action waiver is replaced with language
19 that actually deemed us to have waived avoidance actions
20 against American Express and their related entities that are
21 listed. Again, full indulgence by the Creditors' Committee,
22 reviewed the purchasing program, and people decided that
23 this was the right deal.

24 And I realize it wasn't expressly discussed in the
25 debtors' onerous reply, because we weren't replying to

1 anything. It's just something that we said we would come
2 back with after the October 16 hearing, which I think is now
3 done.

4 THE COURT: Is this just in respect of
5 reimbursement of credit card obligations, 'cause they have
6 other relationships with the debtors?

7 MR. HUEBNER: Yeah. I actually don't -- I don't
8 think these entities have other relationships with the
9 debtors. This is the card -- these are the card purchasing
10 entities that are pretty specific. This is what they do.
11 And as you know, we have no funded debt, and if we did, it
12 wouldn't be from American Express.

13 THE COURT: Okay.

14 MR. HUEBNER: So unless somebody corrects me, I'll
15 look around the room, no one is going to come to you saying,
16 wait, wait, wait, there's something else. So I think
17 that's, I think people are comfortable with the language.

18 So, Your Honor, we're here for what is hopefully
19 the final of, I think by now, maybe four hearings on the
20 debtor's wages motion issues. The things that are left are
21 the AIP, the LTRIP [ph], and in essence two sign-on bonuses
22 for people who were brought to the debtors from other
23 employers with sign-on bonus as part of the package.

24 You know, honestly, in hindsight I really wonder,
25 'cause it's something that I think about whenever we're

1 filing a case, which is which things do you actually put in
2 motions and describe and which things do you take the view
3 or ordinary course. In looking at these programs which have
4 been running for 10 years, 20 years, 30 years and were
5 unchanged with connection with the bankruptcy and
6 preexisted, you know, candidly there was a view that in
7 hindsight I probably still would not have taken, 'cause our
8 way is always the way of disposure and putting things before
9 a court.

10 I never want anybody to say, you know, how could
11 you not have let the world know about this, but I do know,
12 you know, as sort of an aside that now that sort of the
13 evidence is in about the nature of these plans and just how
14 long they've been running and how unchanged they were, that
15 there really is an argument that, in fact, they don't need
16 court approval at all.

17 In fact, as Your Honor noted at our October 10
18 hearing in connection with the severance plan, you know, and
19 I quote on page 115 of the transcript, "If the program was
20 adopted on the eve of the filing of the bankruptcy case or
21 otherwise would appear to be questionable, then it would be
22 subject to review, but if it has been long in place as is
23 the case here, it's subject to the general rules pertaining
24 to the allowance and payment of administrative expenses.

25 So, you know, arguably maybe you would say, you

1 know, horizontal test, vertical test, these programs are 20
2 or 30 years old. They're industry standard. Everybody does
3 them. They don't actually meet court approval at all, but
4 that's not our --

5 THE COURT: I wouldn't say that in these cases.

6 MR. HUEBNER: Correct. And we did not. We did
7 not obviously. And so what we've done instead, obviously,
8 is spend incredible amounts of time in the last few months
9 endlessly negotiating and discussing and diligencing [ph]
10 these programs with various constituencies, including having
11 moved the hearing three times to allow for more time on
12 these sort of, you know, obviously controversials, since
13 we're all here today, issues.

14 So here's how the parties line up. The Creditors'
15 Committee, as I believe you'll hear later today, is firmly
16 and definitively onboard with everything that is in the
17 proposed order and described in the reply brief. We
18 negotiated with them. It's held like around the clock for
19 weeks and weeks. And they are amply satisfied with where we
20 ended up.

21 The Ad Hoc Committee of Consenting States has no
22 objection. They, you know, largely worked -- in this case,
23 they had ceded in parts of the Creditors' Committee, but
24 obviously were kept informed as well, and they are not
25 objecting.

1 The Ad Hoc Committee of Consenting States, who I
2 assume will speak for themselves, as well as Arizona,
3 Pennsylvania, and the Nevada Counties and Municipalities.
4 My understanding is they have no objection at all to
5 anything other than the AIP proposed for the debtors' chief
6 executive officer, Dr. Craig Landau.

7 Late Monday night Maryland filed an untimely
8 joinder to the joinder of the 18 dissenting states. And, you
9 know, we thought hard about what to do about that. I mean,
10 I think the objection deadline was actually October 3. And
11 while the dissenting states at least filed a two-page
12 joinder to the U.S. Trustee's motion months ago, timely,
13 that just said, we adopt the U.S. Trustee's objection and we
14 likewise object, Maryland actually filed nothing at all.

15 And candidly, I'm not sure there's such a thing as
16 a joinder to a joinder. Your Honor has already made it very
17 clear to all parties in this case how you view joinders in
18 general under the case management order is actually even
19 more clear, which actually says the debtors or moving
20 parties don't even have to respond to a joinder and The
21 Court "shall not consider arguments or factual allegations
22 contained only in the joinder."

23 So more on that later, but because in essence
24 Maryland is taking the same view as other people who they're
25 at least not double joinders, they're single joinders. You

1 know, we didn't want to go to the -- for any number of
2 reasons the step of moving to strike as late filed or things
3 like that, but, you know, candidly the flexibility with
4 which parties are viewing the docket at this case is not
5 something that is without burden and cost.

6 So in a case that has, you know, about eight
7 committees and a new one as you just heard a few minutes
8 ago, as of last night, 48 state governments, five occupied
9 territories or inhabited territories, and of course, the
10 District of Columbia and about a million cities and
11 counties, we have reached global peace --

12 THE COURT: Are there unoccupied territories?

13 MR. HUEBNER: Yes, there are uninhabited U.S.
14 territories.

15 THE COURT: Okay. All right.

16 MR. HUEBNER: There are five inhabited U.S.
17 territories, and there are other --

18 THE COURT: Learn something new every day.

19 MR. HUEBNER: Hawaii, by the way, has over 600
20 islands for the record.

21 THE COURT: That's a state, though.

22 MR. HUEBNER: I know, but, no, I'm just saying you
23 think of it as like five islands, but it's actually quite a
24 few islands.

25 THE COURT: Okay.

1 MR. HUEBNER: So we should not lose sight of what
2 we have accomplished, which is leaving aside the U.S.
3 Trustees. In just another moment, in a very complex,
4 difficult case we're essentially down to one person's 2019
5 bonus as the only contested matter. And obviously people
6 are very focused and involved in this case in ways that are
7 even atypical, even within the often challenging world of
8 restructuring.

9 The U.S. Trustee is in a different place. And I
10 guess I -- you know, we heard from them as to their position
11 last night at 10:17 p.m. for the first time. I wasn't sure
12 if they were not objecting at all, which was certainly my
13 hope, or if they were objecting only in part. You know, I
14 know that their office is very stressed and burdened, but to
15 be fair to us, we actually did keep them updated as things
16 were going along and seek calls with them multiple times
17 last week to see where we were and if they needed more
18 information.

19 And in the end, I actually think they're pressing
20 quite a broad objection, which is unfortunate, both to the
21 AIP and to the LTRIP and even to the signing bonuses, which
22 is candidly very disappointing. Given that, you know, the
23 number of parties in the case who were actively involved in
24 this and got comfortable and yet again I find myself at the
25 podium, you know, addressing something that no party in the

1 entire case other than the U.S. Trustee is objecting to, and
2 obviously we're going to be here for quite a bit longer
3 today, having to defend everything other than a single part.
4 I respect their right to do so, but obviously it would have
5 been, you know, nice if it were otherwise.

6 And, Your Honor, it's with very good reason
7 frankly that all the economic stakeholders, both
8 governmental and non-governmental in this case are, in fact,
9 99 percent onboard with the exception of a single AIP
10 payment. Because the settlement and compromises that we
11 reach with the U.S. Trustee are for substantially less money
12 than was actually earned by the employees under these
13 longstanding programs.

14 There are new and huge retentive holds that the
15 trustee -- that the UCC, you know, got us to agree to that
16 take 2019 compensation that's normally paid in March and
17 hold people through most, or in a couple of cases maybe even
18 all of 2020, using that compensation with clawbacks an
19 extended payment schedules. We're not paying incentive
20 amounts for 2017 or before for anyone except for much lower-
21 level employees, and there were other concessions, more than
22 that in amount ultimately by senior-level employees that
23 more than made up for that economically.

24 The cuts that were done, as they should be, were
25 massively progressive, not regressive in the sense that the

1 cuts are by far the deepest at the top. And if you look at
2 the LTRIP cuts, for example, they literally cascade from
3 very big cuts to medium cuts to much smaller cuts as you
4 move down. And the payment terms, you know, don't effect,
5 for example, hourly employees where they really shouldn't.
6 And that, in my experience, is always the right way to do
7 things when you do have to make concessions, and because it
8 is actually critically needed.

9 We pay these amounts. You know, holding this
10 company together, which I know the court is sensitized to
11 from watching so many companies over the decades in
12 unthinkably challenging circumstances. You know, the
13 declarations as well as the motion papers are very clear
14 about the attrition problem that the company quite
15 understandably continues to face.

16 This is a difficult and frankly, you know, often
17 vitriolic working environment with respect to Purdue and
18 various parties abused in public positions on the company.
19 In fact, Your Honor, again, not to over-quote you, I won't
20 do it too many more times, but as The Court note on October
21 10, and I quote from page 120, "It is hard to say that there
22 is any true comparator to these debtors, given the adverse
23 publicity that these debtors have received and that these
24 six individuals have to contend with." This was the little
25 \$115,000 bonus plan that Your Honor approved on that day.

1 And, of course, there's also the 67 percent
2 downsizing that was done on top of that in the last two
3 years. So I think -- I don't think anybody can gainsay,
4 which is why almost everyone is comfortable with almost
5 everything than paying people what they actually have earned
6 under longstanding programs is very important.

7 Then, the last issue which I'll be discussing in
8 somewhat more detail in a few minutes is that with respect
9 to Dr. Landau, who we understand is categorically slightly
10 different and maybe somewhat different certainly in the
11 minds of the objectors, he is the only employee in the
12 entire company who is named in any of the 2,760 lawsuits
13 against Purdue, and we understood that.

14 And we drafted for it, and we and the Creditors'
15 Committee discussed it at great length and actually put it,
16 and this we'll talk about a little bit later, four different
17 special provisions that apply only to him to acknowledge and
18 balance that fact out, provisions that frankly in the
19 debtors' view should have been much more than enough or at
20 least should have been enough to satisfy people who have
21 concerns, which, again, I'll talk about more in a few
22 moments.

23 Your Honor, if it made sense to you, and I'm
24 happy to either do it or not do it, I can do a very quick
25 rundown of what all the changes were, or if the answer is,

1 you know, I've read your papers very carefully, I don't need
2 you to do a super summary of the changes, I'm happy to skip
3 them and proceed with a little bit more advocacy.

4 THE COURT: Well, I think Mr. Lowne's second
5 supplemental declaration and the proposed order laid them
6 out, so.

7 MR. HUEBNER: Perfect. I'm delighted.

8 THE COURT: So as far as, you know, how they're
9 worded and the like --

10 MR. HUEBNER: Yeah. Perfect.

11 THE COURT: -- I kind of pieced together how the
12 10 million is derived, but I don't think you need to go
13 through the agreement that's been reached with the
14 Creditors' Committee.

15 MR. HUEBNER: Perfect. So then, Your Honor, let
16 me then turn to a few salient facts, both on the program as
17 a whole, in light of what I believe is coming from the U.S.
18 Trustee, and then obviously some more specific facts with
19 respect to Dr. Landau, which is what has drawn the objection
20 of a few other parties.

21 Number one, Your Honor has now twice ruled on who
22 is an insider. So that is behind us. I mean, the debtors
23 have actually taken a pretty expansive view, as we had lots
24 of testimony already. There are 10 insiders, and they
25 actually reach reasonably far down in the organization

1 frankly, I think, farther down than is typical. And it is
2 uncontested that there are no insiders at all in the
3 nonexecutive retention plan. There are obviously insiders
4 in the annual incentive plan, which is for every employee in
5 the company, as well as in the LTRIP, which is for
6 everybody, I believe, above the level of director. So I
7 don't think we're going to have to retread a third time who
8 is an insider at Purdue.

9 Two, because of this, the relief is all governed
10 by 503(I)(3), which is the Dana II factors. And, again, as
11 Your Honor surely remembers, you actually ruled extensively
12 on the that and laid out your view of it. This is found on
13 page 118 of the October 10 transcript, and actually
14 unsurprisingly matches very closely the legal standard that
15 we lay out, I think, in great detail with lots and lots of
16 case law in our reply brief.

17 Three, I think there are many other things that
18 are uncontested, and frankly I think that they should be
19 enough to make this hearing actually relatively
20 straightforward as everybody but Dr. Landau.

21 One, these are very old longstanding programs.
22 The Purdue AIP is more than 30 years old. The Rhodes AIP is
23 more than 10 years old. The LTRIP is more than 20 years
24 old. Two, they were not modified in connection with these
25 Chapter 11 filings. These are just the AIP and the LTRIP.

1 Three, the structure of these plans is typical for
2 this industry, which is also found in the declarations.
3 Four, all of these plans in combination are necessary to
4 keep Purdue's employees from not being paid below median
5 comp. As I'm sure Your Honor saw in the Willis Tower
6 Declaration, even if you take away only the non-executive
7 retention plan, that actually drops those employees below
8 the median in a situation where, you know, there's some
9 people we can't hold for love or money, given the
10 circumstances.

11 And to say that people would be willing to stay
12 here having what they view as longstanding expected promises
13 to them breached, compensation they've relied on for years
14 or decades coming in March of the following year and be
15 below market median to boot is simply a bridge way, way too
16 far.

17 Four, the challenging situation in connection with
18 Purdue is there for all to see, the 67 percent downsizing,
19 the substantial continuing attrition. Again, John Lowne's
20 declaration lays out that we've lost 24 more people that we
21 did not want to lose since the petition date, including
22 people who were in the retention plan, who walked away from
23 pending retention payments because they wanted to leave, and
24 the fact that people have been counting on this compensation
25 for many years as part of their annual expected complainant.

1 And then, if you look at the Lowne declaration as
2 well, he actually, I think, has a very helpful and
3 instructive paragraph about the extreme cost and burden to
4 the debtors to fill positions between gap filling while
5 we're trying to find someone new, the time period the
6 positions stay open, the head hunter and related fees to
7 fill the positions and the like, can easily exceed an entire
8 year's compensation for the position at issue.

9 Five, as we lay out in our reply brief, we are
10 very comfortable and, in fact, delighted with the case law
11 that actually governs this motion. Whether you look at
12 RezCap or MESSA or Global Home or Pernix or Dana or Your
13 Honor's sort of, you know, ruling on October 10, we think
14 the law is actually exactly where it should be and where we
15 need it to be, because at the end of the day courts
16 obviously apply the facts to the law.

17 Six, the declarations provide, I think,
18 overwhelming and clear evidence of every single factor
19 contained in the case law. The design of the program, their
20 conservatism, their typicality, the need for the program,
21 the reasonableness of the cost compared to the size and
22 values of the debtors, industry standards, the due diligence
23 that was done, seeking independent advice with respect to
24 the plans, and severe harm if not paid.

25 And the Willis Towers' declaration, this is really

1 worth calling out. All of their analysis that they did and
2 all their support for the members in the plan and the
3 economics are before the UCC compromise is taken into
4 account. So they couldn't recalibrate all their numbers in
5 time, 'cause I guess it's very complicated to do that.

6 So it's all sort of A4CR [ph] squared, because
7 everything that they testified to and all the numbers that
8 they ran through were assuming we were paying it all as
9 opposed to paying it all minus all the concessions, which
10 go, certainly as to the LTRIP, all the way down the line,
11 and their declaration, which just gives these sort of
12 medians and market -- doesn't actually take into account at
13 all the new retentive hold.

14 I mean, the debtors, it's sort of like a buy one
15 get one free where, you know, we're not only taking 2019
16 compensation down, you know, materially, but we're also
17 turning it into, at the committee's request, a 2020
18 retention plan essentially for no extra cost, which
19 obviously makes it, you know, in terms of a true comparator,
20 it makes it an unfair comparator because we're sort of
21 dragging the sea anchor now in terms of people at other
22 companies who get this type of money early the following
23 year, and they could quit the next day and take a new job
24 and negotiate for a new package there.

25 With respect to the two sign-on bonuses, Your

1 Honor, and I'll be relatively brief, 'cause I think it's
2 addressed at some length in the brief and the declarations,
3 this one I just -- it's genuinely hard for me to understand
4 the object to this. These were agreements reached with
5 people before they joined the company to induce them to join
6 the company.

7 It can't possibly be a disguised retention plan,
8 'cause a retention plan is designed to get someone to stay,
9 not to get someone to please come to a company. And as the
10 testimony in the declaration makes clearer, they were
11 largely structured to compensate for the loss of large
12 equity packages that people held at other companies that
13 vested over time, and it was the company that negotiated to
14 pay the sign-on bonuses over time as opposed to upfront
15 because it's better for the company as opposed to giving
16 somebody a huge, sort of, lump sum on the day they start and
17 then sort of hoping it pans out.

18 In the case of the general counsel, for example,
19 the bonuses are much, much less than the value of the equity
20 package that he gave up when he left his 27 billion dollar
21 market tap prior employer, and he was considering multiple
22 other offers, some of which were substantially more
23 compensatory than Purdue, to take a package that was
24 actually less, and people coming to the company have no
25 LTRIP obviously for a while.

1 And so the committee, which it's their job, I
2 guess, except when I'm opposite them, and then it's not
3 their job, this is exactly what they diligenced very
4 thoroughly. And they asked for data and numbers and proof
5 and examples and the like, and that is how they got totally
6 comfortable that these things were appropriate. And, again,
7 you know, it's not only about the facts, it's about the law.

8 And our reply brief lays out at length that the
9 law is also very clear here. Even if it is true that
10 something like a sign-on bonus has some retentive effect,
11 that's not the test. The test is, is this designed as a
12 retention thing. Is it primarily retentive? And we cited
13 RezCap and Dana and Zello [ph] and Nelson, and those are
14 incentive plans.

15 When someone's already at the company and you're
16 incentivizing them, these are people we lured from the
17 outside, and, you know, you also saw, as I'm sure you did,
18 you know, I think more than two pages, paragraphs 50 to 54,
19 of the Lowne declaration that provide extensive evidentiary
20 support for the sign-on bonuses. This practice has been
21 going on for more than 20 years.

22 I mean, all companies lure people in with signing
23 bonuses. That's not news. It's commonplace in the
24 industry. It mirrors forfeited payments, and it's
25 negotiated entirely prior to people accepting employment.

1 You can't come to the company and then negotiated a sign-on
2 bonus. That's not how it works, and that's not how these
3 worked.

4 And here also by the way, the UCC hammered us and
5 said even for this we want changes. And so we agreed to
6 move people's payments out 90 days each, and they have to
7 stay until 12/31/2020, or else these payments can be clawed
8 back.

9 So, you know, we really think that it has really
10 pushed things forward candidly, Your Honor. I originally --
11 I'm not going to do it. I'll do it later if I have to, but,
12 you know, I was going to potentially take the court and the
13 people in the courtroom through a 2-minute walk through the
14 two declarations, because the sheer amount of evidence -- I
15 mean, the Lowne's declaration is about 35 pages of just pure
16 density on the nature of these plans and they're
17 longstanding. But obviously knowing that The Court is a
18 reader, I will forebear for now and obviously will pullout
19 tendrils of the undisputed and hopefully undisputable
20 evidence as we need it after others speak.

21 So let me then turn from the part in here I hope
22 didn't -- I hope not to have to do at all. It's a part of
23 the hearing that I knew a few days ago we were likely to
24 have to do, which is the 1.313 annual incentive payment
25 contemplated for the CEO.

1 So, Your Honor, here's how the debtors see it.

2 Number one, Dr. Landau is named in two attorney general

3 lawsuits out of the 48. I'm aware that the word multiple

4 means more than one, but in the dissenting states pleading

5 to repeatedly say multiple Ags, multiple Ags, multiple Ags,

6 when it's actually two is not like exactly, I think, quite

7 fair.

8 Two Ags have named Dr. Landau in their complaints.

9 The others have not, nor is he actually, to our knowledge,

10 named in scores of other lawsuits. We believe that he is

11 named in 11 other lawsuits against the company, which is out

12 of 2,760, and there are about 30 other lawsuits as Your

13 Honor certainly remembers in the injunction hearing, a very

14 recent trend as our filing was getting close, where the

15 people have filed lawsuits against everybody but Purdue.

16 And so there are a couple of dozen of those as well, but

17 obviously it is a tiny fraction of the lawsuits that are

18 pending.

19 But again, we don't know where history is going to

20 take us. The Creditors' Committee and the debtors were very

21 sensitive to the fact that Dr. Landau is named in some

22 lawsuits, unlike every other employee of the company. And

23 so we did four different things in contemplation and to

24 accommodate that reality.

25 Number one, his LTRIP amount is zero, and his AIP

1 amount is reduced to 50 percent, which is a cut far, far,
2 far deeper than anyone else. And he did that largely to
3 lead by example because the committee just demanded a
4 certain level of economic concessions separate apart from
5 the analytics and the framework. And so, you know, by our
6 and my math, Mr. Preis' math and my math, I think that's
7 about a 62 percent cut in his earned, under these
8 longstanding plans, compensation.

9 Two, Dr. Landau alone has June 1, 2020 and
10 September 1, 2020, payment dates. Those are seven and ten
11 months away. And if he chooses to resign without cause
12 before either of those payment dates, he does not get any
13 remaining funds that will be payable after the date of the
14 resignation. So his -- he's now being held all the way
15 until September 2020 on his 2019 compensation.

16 Three, there's an express provision in the order
17 that his AIP payment -- payments, there are two of them --
18 are subject to reconsideration as he is found liable by
19 final order. So, you know, this sort of seemed like
20 whoever's right, it works because if it turns out that
21 someday, you know, the accusations of some of the plaintiffs
22 turn out to be correct, then people -- and it might even be
23 the debtors, might be the committee, might be the state that
24 prevails has an absolute clear and in order to come back and
25 say, if you knew then what you know now, you probably

1 wouldn't have done this.

2 And look, and I don't know. The answer may be if
3 he's found liable for \$100,000 of damages, maybe the answer
4 is he needs to just pay that in full. I don't know what's
5 going to happen. As I'll talk about in a few minutes,
6 saying that right now he should be forced to work for very,
7 very, very off-market compensation because of the risk that
8 someday someone might find that he's liable, is actually --
9 I think has no home anywhere in American law either in or
10 out of Chapter 11.

11 And four, the exact anti-secretion language
12 verbatim that everybody agreed was good enough for the
13 Sacklers, who are alleged to have billions and billions of
14 dollars, that the estate or others either are going to or,
15 you know, seek to get at was agreed to by Dr. Landau. So it
16 will be there if we need to try to get it back someday.

17 Your Honor, with these changes, according to the
18 Willis Towers declaration, Dr. Landau is now 21 percent
19 below the 50th percentile on median compensation and only 12
20 percent above the 25th percentile. So, you know, it's not
21 an interpolation. So you can't say he's in the 29th
22 percentile, 'cause that's now how comp consultants think
23 about things, but those are their numbers.

24 THE COURT: It is -- is it contemplated that Ms.
25 Gartrell is going to be cross-examined on this?

1 MR. HUEBNER: I assume so. She's here. I mean,
2 yes.

3 THE COURT: Well, I'm looking at the objectors.
4 If not, I have a question now, but I'll wait for cross-
5 examination if there's objection.

6 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
7 for the U.S. Trustee's Office. I have two or three
8 questions.

9 THE COURT: Okay. Does anyone else contemplate?

10 MR. TROOP: It depends on what Mr. Schwartzberg's
11 questions are, Your Honor.

12 THE COURT: Okay. So I'll save my question.

13 MR. SCHWARTZBERG: I guess I'm going first.

14 MR. HUEBNER: But of course, Your Honor, it's
15 worse than that because it's not just that he's 21 percent
16 below the 50th percentile. It's that unlike all the other
17 CEOs, he doesn't get paid in the early part of the next year
18 and then is free to do what he would like with his life. He
19 is bound to stay all the way until September in order to get
20 his prior year's compensation, and he's subject to both
21 forfeiture and nonpayment obviously under the terms of the
22 board.

23 So, Your Honor, in our view, 'cause, you know, we
24 took this all very seriously, as certainly did the UCC, who
25 is no, kind of, you know, look tell with respect to the

1 debtors and executives and all the like. We thought this
2 was more than enough, that the structure is appropriately
3 protective of the estate. He's well below median.

4 And then there are the things that are a little
5 bit more complicated to wade into, but they're unavoidable.
6 And so, it's unfortunate, but here we go.

7 So to say it most simply, Your Honor, I have
8 personally myself asked various lead representatives of the
9 dissenting states on multiple occasions, I would even use
10 the phrase again and again, the following. If there are
11 things about Dr. Landau that you think we need to know, and
12 you think he engaged in wrongdoing, and you have evidence or
13 documents, you need to tell us because we need to know.
14 Because if actually it turns out that Dr. Landau is a
15 wrongdoer and people have proof of that, there are going to
16 be consequences that might flow from that.

17 The response to request after request after
18 request has been nothing. No one has ever given the debtor
19 a single document other than see what -- go see what we said
20 in our complaints, which are allegations, in response to
21 those requests.

22 Number two, for worse or for better I have now
23 been personally working on this case just about full time
24 for 21 months. And I have talked to scores, certainly way
25 more than dozens, employees, directors, advisors, counsel,

1 counsel for various parties, and for what it is worth, and
2 obviously I'm not testifying. I'm just telling you why the
3 debtors believe this is the right balance of all these
4 issues, I have not seen a document or had one brought to my
5 attention that suggests to me misconduct, certainly of the
6 type that would suggest that Dr. Landau should be working
7 for what would be about 50 percent of median pay, i.e. base
8 salary only.

9 And had someone brought those things to our
10 attention or had we seen them ourselves, we certainly would
11 have been obligated to bring them to the board's attention
12 and possibly also to The Court's attention.

13 Your Honor, in this country we are innocent until
14 proven otherwise, and there is no doctrine that says that an
15 employee has to work for one half of median market pay
16 because 1 percent of the litigants suing his employer also
17 named him in their complaints. There's certainly no remedy
18 remotely like that outside of the bankruptcy system where
19 you could say I brought a lawsuit or a charge against the
20 company and I want their employees to start working for half
21 pay until my lawsuit is resolved. It's just not the way it
22 works. We needed a structure to address the concern, and
23 the structure was meticulous and thoughtful.

24 Now, what might the dissenters say back to this,
25 'cause obviously they're going to speak next. And our goal

1 in trying to work this out, and we tried desperately hard to
2 work it out. In fact, two of the four prongs we offered
3 unilaterally after we were done with the UCC just to try to
4 see if we could bring everybody else on board.

5 The first thing they're going to say, 'cause they
6 say it in their papers, is but, Your Honor, we're enjoined
7 at present. So we can't really prove our case. Yeah, that
8 doesn't do much for me because they've had years of
9 discovery, and they say that they knew enough to name him
10 personally in their complaints and how seriously they take
11 that, and I assume that that means that if they have stuff,
12 they already have it, and they should show it to us.

13 There are 50 million produced documents. The fact
14 that right now there's a Temporary Stay of Discovery doesn't
15 mean that the CEO should not get below market but reasonable
16 compensation for now.

17 The second thing they may say, and this is
18 specific to Massachusetts, is we survived a Motion to
19 Dismiss. True, but not particularly meaningful. 'Cause of
20 course as everyone in the courtroom knows very well, under
21 signing a Motion to Dismiss, all facts alleged are assumed
22 as they are required to be as true. So it doesn't actually
23 prove even a peppercorn of the ultimate merits of someone's
24 case that they got to pass the Motion to Dismiss.

25 And candidly, Your Honor, I don't know if you read

1 all of the Massachusetts rulings that they appended, I did,
2 and I actually found it kind of surprising that when The
3 Court ruled on the Motion to Dismiss of the three named
4 defendants, the only actual documents and facts he cited
5 related to the other two about their involvement. They
6 actually didn't cite a single thing, literally not one about
7 Dr. Landau, which I actually was kind of shocked by, 'cause
8 I assumed that that would have not been the case.

9 Three, although actually under the CMO I'm not
10 supposed to have to respond to the new evidence brought only
11 in their joinders, and I'm not sure they're even allowed to
12 argue it, let's put that aside. 'Cause for now we'll
13 reserve, you know, assuming that everyone can say what they
14 want.

15 So as proof that Dr. Landau may be a bad guy, they
16 cite nine words from one document from 2017. So let's talk
17 about that for a minute.

18 Number one, that document is subject to a
19 protective order. So I don't -- unfortunately, I'm actually
20 not at liberty to tell you about what that document actually
21 says, which is really a shame. Because I actually think
22 that you'd be probably pretty satisfied if you read that
23 document on the issues for which it cited.

24 Two, that document was written by Dr. Landau while
25 he was not an employee of Purdue. He was working up in

1 Canada where he had been since 2013, and he was essentially
2 auditioning for the job to be CEO of Purdue. And what he
3 said, and they quote, these were their quotes, that he was
4 pitching a "Opioid consolidation strategy" and was
5 suggesting that Purdue become, you know, bigger in the
6 opioid space "As other companies abandoned the space."

7 Those were -- that's it. Opioid consolidation
8 strategy as other companies abandoned the space. How that
9 suggests misconduct or active participation in misbranding
10 or any of the other allegations against the company is
11 beyond me entirely. And as I said, you know, we went back
12 and forth because we're very wary about improper de-
13 designation of documents, and so we're in an extremely
14 unfair position where for whatever reason, I'm sure it's
15 legitimate, I'm not saying it's not, they're somehow allowed
16 to quote from a document that we're not, but that's what the
17 litigators told me is probably right. So I'm not going to
18 quote from it.

19 But even the quotes they do bring in their joinder
20 where they're actually not allowed to do that, in fact, I
21 just don't even think they're troubling, for the record. If
22 he was suggesting improper pathways to becoming a bigger
23 company -- I'm not planning to show a movie, Your Honor,
24 just for the record. Fine. Does this mean I should -- I'm
25 almost done. Every hearing something happens to tell me

1 it's time to sit down.

2 So that's 2017. That's the one document, and
3 those are the nine words, which, you know, candidly I -- it
4 is what it is.

5 The last issue, Your Honor, is that the period
6 that we're talking about for which this AIP payment reduced
7 by 62 percent was actually earned is 2019. And there are no
8 allegations of any kind, of any kind by anybody, even a
9 whisper of a hint that Dr. Landau was within 1,000 country
10 miles of misconduct in 2019.

11 As a reminder, Dr. Landau joined Purdue near the
12 end of 2017, and quite quickly oversaw as the CEO of the
13 company the entire dismantling of the sales force, the
14 firing of the entire sales force, the cessation of
15 promotion, and then in 2018 and '19 the exiting of the
16 shareholders from the board and ultimately the settlement
17 framework and ultimately the Chapter 11, and frankly held
18 the company together in impossibly difficult circumstances
19 during that period.

20 So I do want to be clear. I'm not saying, 'cause
21 I don't know, and I want to be very clear about this. I'm
22 in no position to say, Your Honor, we did a forensic
23 investigation, we spent 12,000 hours, we've read every email
24 of Dr. Landau's for the last 12 years, we know there's
25 nothing here, because we don't know that. You know, that's

1 not something that had to be done at this point in time.

2 It's something that may or may not ever have to be done.

3 But what I do know is that we understood the
4 problem. We structured very thoughtfully and deliberatively
5 with -- for that problem with the UCC. And as of now we
6 don't know of anything that suggests that Dr. Landau was
7 engaged in misconduct. If we did know that or believed
8 that, or if anyone had brought us any documents that
9 suggested that, we would be in a different place, but we're
10 not.

11 So I stand kind of very firmly by the four-prong
12 compromise, which again, I never seen anything like it
13 before, but our job is to constantly adjust to the
14 circumstances, and we believe that we've done so quite
15 appropriately. And to say that the remedy for allegations
16 that are made is that he should work for base pay only,
17 which would put him at about a half of industry-median pay.
18 This is not something that we think is appropriate.

19 So, Your Honor, I will save everything else for
20 later, but that is the company's view on the things up for
21 today.

22 THE COURT: Okay.

23 UNIDENTIFIED SPEAKER: Did you want to hear
24 evidence first and then go to argument, or how did you --

25 THE COURT: Yes. Unless certainly someone wants

1 to say, you know, their narrowing issues.

2 MR. HUEBNER: Yeah. So, Your Honor, at this point
3 I think probably we move to admit the declarations of our
4 two declarants into evidence.

5 THE COURT: Okay. So that would be Mr. Lowne's
6 second supplemental declaration.

7 MR. HUEBNER: Yes, Your Honor.

8 THE COURT: And Ms. Gartrell's declaration. Okay.
9 So it would be those two.

10 MR. HUEBNER: Yes, Your Honor.

11 THE COURT: All right. Does anyone want to
12 question either of those two people?

13 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
14 for the U.S. Trustee's Office. I would like to question
15 both of them. I have just a few short --

16 THE COURT: Okay. All right. So who do you want
17 to call, Mr. Lowne, first?

18 MR. HUEBNER: This is Mr. McClammy's show now.

19 THE COURT: Oh, okay.

20 MR. MCCLAMMY: Yes, Your Honor. I think it makes
21 sense to call Mr. Lowne first.

22 THE COURT: Okay. So could he take the stand?
23 Would you raise your right hand, please?

24 //

25 //

1 WHEREUPON,

2 JON LOWNE,

3 called as a witness, and having been first duly sworn to
4 tell the truth, the whole truth and nothing but the truth,
5 was examined and testified as follows:

6 THE COURT: Mr. Lowne, you submitted a second
7 supplemental declaration in connection with this motion.
8 It's dated December 2, 2019, and it's intended to be your
9 direct testimony in support of the remaining aspects of the
10 motion that was originally filed. You understand that,
11 right?

12 THE WITNESS: Yes.

13 THE COURT: And is there anything in it that
14 you -- you know, we dropped their competitor. Maybe we'll
15 drop them, too.

16 I'm referring not to you, Mr. Lowne, but -- court
17 call.

18 Is there anything in your declaration you wish to
19 change?

20 THE WITNESS: No, there isn't, no.

21 THE COURT: Okay. So I will admit it as your
22 direct testimony. I've reviewed it. So does anyone want to
23 cross-examine Mr. Lowne?

24 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
25 for the U.S. Trustee's Office.

1 THE COURT: Okay.

2 DIRECT EXAMINATION

3 BY MR. SCHWARTZBERG:

4 Q Good afternoon, Mr. Lowne.

5 A Good afternoon.

6 Q Pleasure to see you again. First, just for the
7 record I want to confirm what we discussed last time as to
8 the determination of insiders. You submitted a supplemental
9 declaration. I think it's Docket Number 236. Do you recall
10 that declaration?

11 A Yes.

12 Q And in that declaration you list 10 individuals
13 that the debtor admits are insiders. Is that correct?

14 A That's correct.

15 Q Do you need to see that again, or you're happy
16 with -- you're comfortable that those 10 are the insiders?

17 A I'm comfortable that those 10 are the insiders.

18 Q I want to -- do you have a copy of your
19 declaration?

20 MR. HUEBNER: Which one?

21 MR. SCHWARTZBERG: Oh, I apologize.

22 BY MR. SCHWARTZBERG:

23 Q Then this week you filed a second supplemental
24 declaration. Do you have a copy of that declaration?

25 A I don't have it in front of me, no.

1 MR. HUEBNER: Do you need one?

2 MR. MCCLAMMY: May I approach, Your Honor?

3 THE COURT: Sure.

4 BY MR. SCHWARTZBERG:

5 Q Can I refer you to paragraph 39? And I don't want
6 to beat a dead horse, but I hadn't seen this phrase or this
7 term before. On page 21 of the declaration you refer to the
8 CEO's executive committee. What is the role of the CEO's
9 executive committee?

10 A The role of the CEO's executive committee, they're
11 the more senior management levels of the organization, and
12 they're a group of individuals that we try and keep briefed
13 on important matters that impact the business.

14 Q And if I'm correct, there's seven insiders on that
15 committee?

16 A I believe all of the insiders are on that
17 committee from -- if you go to the insiders' list, I think
18 they're all on that committee.

19 Q I'm looking at paragraph 39, of note 16. It
20 indicates there are seven insiders.

21 A Okay.

22 Q Are you saying there are 10 insiders?

23 A Can you give me the insiders' lister, and I'll
24 tell you if any of them are -- actually, I think you're
25 right. Yeah. There are a couple of insiders that aren't on

1 it, yes.

2 Q Would you like the list? I can get --

3 A If you can give me the list, I can tell you the
4 insiders that aren't on there.

5 MR. SCHWARTZBERG: May I approach the witness,
6 Your Honor.

7 THE COURT: Yes.

8 MR. SCHWARTZBERG: Your Honor, may I approach?

9 THE COURT: Oh, I said yes.

10 BY MR. SCHWARTZBERG:

11 Q To call your attention, in that document I believe
12 it's page nine, footnote four.

13 A Are you sure you've given me the right document,
14 'cause page nine, I don't see a footnote four.

15 Q Oh, I apologize, paragraph nine.

16 A Oh, okay. Yes, I now see it, yes.

17 Q So are there seven or ten insiders on the CEO's
18 objective committee?

19 A Seven is the correct number.

20 Q Okay. The 10 people that are not in paragraph
21 nine, footnote four, the admitted insiders, what are their
22 titles?

23 A The titles of the three that aren't on the
24 executive committee?

25 Q The titles of the 10 that are on the executive

1 committee --

2 A Oh, okay.

3 Q -- that are not admitted insiders.

4 A So I mean just to go through them, Craig Landau is
5 on the executive --

6 THE COURT: No, no. I think you misunderstood his
7 question.

8 THE WITNESS: Okay.

9 THE COURT: What Mr. Schwartzberg wants to know is
10 what are the titles of the 10 non-insiders that are on the
11 executive committee.

12 THE WITNESS: I don't know if I know all of their
13 titles off the top of my head, but I could give you a couple
14 of examples. Our head of security is on the executive
15 committee. I'm not sure of his exact title. Our head of
16 compliance is on the executive committee. I'm not sure of
17 her exact title. Our second in command in our medical
18 affairs group is on the executive committee. There are
19 three people that come to mind.

20 BY MR. SCHWARTZBERG:

21 Q Do you know if there are any officers, if any of
22 those 10 people are officers? Are any of those 10 people
23 officers if you know?

24 A No, I don't believe so.

25 Q They're not officers or you don't know?

1 A I'm pretty sure they're not.

2 Q Okay. And do you know how the people on the CEO's
3 executive committee were selected?

4 A I think it's based upon seniority in the company
5 and based upon generally keeping people informed on a
6 relatively senior level, informed about what's going on with
7 the business.

8 Q And do any of the 10 non-insiders on the CEO's
9 executive committee report to the board or just the CEO?

10 A They certainly don't report to the board. I'm,
11 I'm not sure if any of them report even to the CEO directly.

12 Q Okay. Thank you. How many -- I'm going to now
13 turn to the incentive plan.

14 A Yes.

15 Q And I ask those questions. I had not seen that
16 term before. It popped up for the first time.

17 A Sure.

18 Q So I was curious about that. How many insiders
19 participate in the Purdue annual incentive plan?

20 A All of them.

21 Q Okay. And how many insiders participate in the
22 Rhodes annual incentive plan?

23 A All of the persons employed by Rhodes participate
24 in the Rhodes annual incentive plan.

25 Q And how many is that? I'm hearing three in the

1 background.

2 A Yeah. Three.

3 Q So three of the seven.

4 A Yes.

5 Q Okay. All right. Is it correct that the bonuses
6 for both the Rhodes and the Purdue incentive plans are based
7 on employee performance and the performance of the company?

8 A That is correct.

9 Q Okay. Isn't it true you do not disclose the
10 specific employee metrics of the 10 insiders in your
11 declaration?

12 A You're referring to the individual objectives of
13 the 10 people, I believe, then, that's correct.

14 Q I want to turn to the company's performance or the
15 company's metrics.

16 A Sure.

17 Q The largest metric for the 2019 is the operating
18 profit margin, correct?

19 A That is correct.

20 Q And that's 60 percent?

21 A Yes.

22 Q And the operating profit margin metric for Purdue
23 is negative 30 million, correct?

24 A That is correct.

25 Q And the estimated operating profit margin is

1 actually a positive 48 million, correct?

2 A Yes.

3 Q Okay. Can I turn to paragraph 22? Isn't it true
4 if there's a negative 89 million dollar operating profit
5 margin, there's still a benefit towards the -- how to define
6 at the corporate objective results percentage?

7 A That is correct. But it would be prorated between
8 the negative 70 million and the 90 million, yes.

9 Q So the 90 million is a zero threshold.

10 A That's right.

11 Q Has there ever been a year when determining an
12 annual incentive payment that the assigned score percentage
13 for the operating profit margin metric was zero?

14 A I don't recall in my tenure that we've ever paid
15 out zero on the operating profit margin metric.

16 Q So you've never fallen at or below the threshold?

17 A The threshold for zero, correct.

18 Q All right. I want to turn to the Rhodes incentive
19 plan on paragraph 15 discussion.

20 A Okay.

21 Q The operating profit margin listed metric is a
22 negative 10 million, correct?

23 A That is correct.

24 Q And the actual operating margin is negative 26
25 million, correct?

1 A These are all estimated numbers, obviously at this
2 stage. That's correct.

3 Q Actually -- okay. So despite failing to reach the
4 negative 10 million operating profit margin, isn't it
5 correct that 75 percent is still accredited towards the
6 corporate objective results percentage?

7 A That's correct.

8 Q Okay. And as long as the operating profit margin
9 is above negative 70 million, which is seven times the
10 negative ten amount, there's a benefit towards the corporate
11 objection results percentage, correct?

12 A That's correct.

13 Q Okay. Incidentally, if the sale of opioids
14 increases, does the operating profit margin increase?

15 A Yes.

16 Q So the more opioids sold indirectly it'll affect
17 the bonus.

18 A That is correct. We were a for-profit company,
19 and we're an opioid company.

20 Q Okay. Let me turn to paragraph 23. This is the
21 bonus for achieving milestones. Isn't it correct that if
22 they are two quarters late, it's still a benefit towards the
23 corporate objection results percentage?

24 A That is correct.

25 Q Okay. Let me turn to paragraph 24 regarding

1 business plans. The metric is three business plans,
2 correct?

3 A That is correct.

4 Q Isn't it true there's still a credit towards the
5 corporate objecting results percentage if only one business
6 plan is presented?

7 A That is correct.

8 Q Okay. Let me turn to paragraph 25, the metric is
9 three initiatives, correct?

10 A Correct.

11 Q Isn't it true if you just launch one initiative,
12 there's still a credit towards the corporate objective
13 results percentage?

14 A Of 25 percent, yes. Yeah.

15 Q Okay. The, I guess you call it, estimated
16 corporate objective results percentage for 2019 is 118.
17 Isn't that correct?

18 A That was an estimate, yes.

19 Q Did you disclose the corporate objection results
20 percentage of 2018?

21 A Sorry. Could you repeat the question?

22 Q Isn't it correct that you did not disclose the
23 corporate objection results percentage for 2018 for the 2018
24 incentive plan?

25 A Disclose it to who?

1 Q In your declaration.

2 A I thought the 118 percent was mentioned. If it
3 wasn't, I'm mistaken.

4 Q Maybe I spoke too quickly. The corporate
5 objection and resultant percentage for 2018.

6 A Oh, sorry, I misheard you. I don't think we
7 disclosed it in this declaration.

8 Q Do you know what it was?

9 A I don't recall, but I recall it being above 100
10 percent.

11 Q Did you disclose the corporate objection result
12 percentage for 2017?

13 A Not in this declaration we didn't, no.

14 Q Okay. Did you disclose the corporate results
15 percentage for the 2016 incentive plans?

16 A I don't think we disclosed anything prior to
17 current year.

18 Q Do you know what they were?

19 A I don't recall all of them, but we've had,
20 certainly had years where they've been above 100 percent,
21 sometimes significantly. There have been years where they
22 have been below.

23 Q When was the last year an incentive payout was not
24 made because the metrics were not met?

25 A I don't recall what year that was. I think it --

1 I believe in the last five years we've had payouts less than
2 100 percent.

3 Q Excuse me. You must have misheard me.

4 A I'm sorry.

5 Q When was the last year payments were not met
6 because the -- were not made because the metrics were met?
7 So you paid above the threshold below the target. Have you
8 ever had a year when zero incentive bonuses were paid?

9 A We haven't had a year where there's been zero
10 percent paid.

11 Q Okay. Okay. I'm going to turn to the long-term
12 results plan. I believe it's paragraph 36 if that helps.

13 A Okay.

14 Q There are nine insiders that participate in the
15 long-term results plan.

16 A That is correct.

17 Q According to the declaration, your declaration,
18 the metrics for the 2017 Rhodes long-term results plan to be
19 paid, I believe, in March 2020, are the same as the Rhodes
20 annual incentive plans -- are the same metrics that were
21 used in the Rhodes annual incentive plan, correct?

22 A That is correct.

23 Q Okay. Isn't it also correct that you did not
24 disclose the 2017 and the 2018 metrics of the Rhodes annual
25 incentive plan?

1 A That is correct.

2 Q Okay. When was the last year that no payment was
3 made on the Rhodes long-term results plan because metrics
4 were not achieved?

5 A Rhodes has only been a subsidiary of Purdue since
6 May of this year. So I'm not that familiar with the
7 history, but I'm not sure that I'm aware that they've ever
8 paid zero percentage.

9 Q Okay. Can I turn to paragraph of 44 of your --

10 A Sure.

11 Q And we're switching to the Purdue long-term
12 results plan. It's correct the Purdue long-term results
13 plan metrics are a three-year operating profit margin and
14 three-year next sales targets from the products other than
15 OxyContin, 50 percent for each, correct?

16 A That is correct, for the 2017, yes.

17 Q So just referencing the operating profit margin,
18 if Purdue reaches 80 percent of that operating margin
19 target, they get 80 percent of the bonus which you reached
20 for that metric. Is that correct?

21 A That is mathematically how it's calculated, yes.

22 Q If they reach 20 percent or only reach 20 percent,
23 they get 20 percent of the bonus attributed to that metric.
24 Is that correct?

25 A That is correct.

1 Q So unless operating profits are zero and the net
2 sales from OxyContin -- non-OxyContin products are zero, a
3 bonus will be paid, correct?

4 A Correct.

5 Q Okay. When was the last year when there were no
6 payouts under the Purdue long-term results plan?

7 A I don't recall ever a zero percentage payout.

8 Q Okay. I just want to turn your attention to the
9 sign-on bonuses, paragraph 51. There are two insiders
10 receiving sign-on bonuses, correct?

11 A Correct.

12 Q Okay. Who are they?

13 A Christian Mazzi and Marc Kesselman.

14 Q And what are their titles?

15 A Marc is our general counsel. Christian Mazzi, I'm
16 going to go to the other declaration to get his exact title.
17 He is the president and the executive medical director Adlon
18 Therapeutics LP.

19 Q And what are the sign-on bonuses that are supposed
20 to be paid under these agreements for the -- let's start
21 with the GC. What's his sign-on bonus?

22 A I don't know the exact split between the two
23 individuals, but in combined they're 1,987,500, which is in
24 paragraph 51. My understanding is that directionally, I
25 don't have the exact numbers in front of me, Christian is

1 around 600,000, and Marc is 1.3. But I may be wrong because
2 it's been a while since I've looked at it.

3 Q And is that the sum and total of the sign-on bonus
4 as it existed when they actually got entered, or is that the
5 remaining amount?

6 A That would be the remaining amount.

7 Q Do you know what the actual aggregate sign-on
8 bonus is for -- the aggregate amount, so you don't have to
9 split it up between the two of them.

10 A All right. So it's the full amount for Christian
11 Mazzi. He has no -- actually, let me rewind that. There
12 certainly has been payments prior to these amounts. So I
13 don't know -- I don't recall what they were.

14 Q But they were to be above the 1.987 million.

15 A That is correct.

16 Q Okay.

17 A This is -- the 1,987,500 represents the remaining
18 payments.

19 Q And these individuals executed or made these
20 agreements prior to the filing of this bankruptcy case,
21 correct?

22 A That is my understanding, yes. Yes, that is the
23 case.

24 Q How come the full amounts were not paid when
25 either they signed on or their first day of employment?

1 A So I'll repeat what Marshall said in his opening
2 remarks, is typically when someone joins the company, it's a
3 negotiation of the signing of this amount, because they're
4 giving something up to come to the company. Typically what
5 they're giving up may be a combination of, for example, an
6 annual bonus or some long-term incentive at their previous
7 company, or some kind of equity award that invests over a
8 period of time.

9 So as a company we try and negotiate as best as we
10 can to have a delayed payment schedule as part of that sign-
11 on agreement. It's a negotiation that happens when we're
12 trying to induce someone to join the company.

13 Q Why do you delay the payments?

14 THE COURT: Oh, come on. Because it's a cash flow
15 issue. You don't need to answer that question.

16 THE WITNESS: Okay.

17 THE COURT: That's obvious.

18 BY MR. SCHWARTZBERG:

19 Q I have one last question. Actually, can you hold
20 on for a moment?

21 A Sure.

22 MR. SCHWARTZBERG: Your Honor, I have no more
23 questions.

24 THE COURT: Okay. Any redirect? Oh, I'm sorry.
25 This is on Mr. Landau, right?

1 MR. TROOP: This is on Mr. Landau, yes.

2 THE COURT: Okay, all right.

3 MR. TROOP: Having a fact witness up there might
4 answer a question that Mr. Huebner raised, and then also
5 address some issues that were raised in objection.

6 CROSS EXAMINATION

7 BY MR. TROOP:

8 Q You were in the courtroom when Mr. Huebner wasn't
9 testifying when he started earlier today, correct?

10 A Yes.

11 Q Okay. And you heard Mr. Huebner talk about a
12 statement, a written statement by Mr. Landau in 2017. Is
13 that correct?

14 A I heard that, yes.

15 Q Yes. And he said that was before he was employed
16 by Purdue. Is that correct?

17 A I -- that's what I've heard, yes.

18 Q But he was the CEO of Purdue Canada at that time,
19 wasn't he?

20 A He was the CEO of Purdue Canada before he came to
21 Purdue U.S., yes.

22 Q Okay. Now, as I understand it, you're declaration
23 confirms that there have been no changes to the terms of the
24 specific bonus plans for a long period of time. Is that
25 correct?

1 A That's correct.

2 Q But your affidavit doesn't talk about, for
3 example, the changes of the impact of the terms of Mr.
4 Landau's compensation prior to the filing on his rights or
5 benefits under the plan, does it?

6 A It doesn't, no.

7 Q Okay. So let's walk through that for a little bit
8 and see if we can understand that just for a moment. First
9 of all, when Mr. Landau was employed by Purdue U.S., he
10 started working in May of 2017, give or take, May 22, 2017.

11 A Yes.

12 Q And the employment agreement was signed on October
13 5, 2017. Is that correct?

14 A I don't recall the date, but I know he started
15 work in '17.

16 Q So under his original employment agreement as the
17 CEO of Purdue U.S., his base salary was 1.25 million
18 dollars, correct?

19 A I don't recall the exact amount, but I'm sure
20 that's correct.

21 Q And he was promised retention payments totaling 3
22 million dollars per year, which were to be paid in 2020,
23 2022, 2024, and 2026, correct?

24 A I'm not sure the exact details of those amounts,
25 but I'm aware that the CEO has a retention.

1 Q Can you remind me when you became CFO of Purdue
2 U.S.?

3 A On a permanent basis I believe it was February of
4 2018.

5 Q Okay. And before that on a non-permanent basis?

6 A On the interim basis in August of 2017.

7 Q Okay. So you were the interim CFO at the time
8 that the employment agreement was executed in October of
9 2017, correct?

10 A That is correct.

11 THE COURT: Did I understand -- was the question 3
12 million each of those years or 3 million over the entire --

13 MR. SCHWARTZBERG: Three million each of those
14 years, Your Honor.

15 THE COURT: Okay.

16 BY MR. TROOP:

17 Q And it was 3 million of each of those years.
18 That's my understanding. Is that correct, Mr. --

19 A I don't, I don't recall the exact details. I
20 don't have his employment agreement in front of me.

21 Q Do you recall Mr. Landau's employment agreements
22 being amended in June of 2018?

23 A I, I know his compensation has changed. I don't
24 remember the timing of when the changes were made.

25 Q You were CFO in June of 2018, correct?

1 A That is correct.

2 Q If I represent to you that the contract was
3 amended on June 8, 2018, do you have any reason to doubt
4 that that's true?

5 A No.

6 Q Was that about three months after Davis Paul got
7 retained to provide insolvency-related advice to the
8 company?

9 A I don't recall the exact date that they were
10 retained, but I'm sure you've done the research, and that's
11 probably correct.

12 Q I think Mr. Huebner told us today it's been --

13 MR. HUEBNER: Twenty-one.

14 MR. TROOP: -- 21 months, so almost two years,
15 that would put us back into March.

16 THE WITNESS: That's definitely correct.

17 BY MR. TROOP:

18 Q Okay. So I got the timing of that sequence
19 correct. So in connection with that amendment, do you
20 recall that Mr. Landau's base salary increased from 1.25
21 million dollars to 2.5 million dollars?

22 A I don't remember the exact amount before or after,
23 but that doesn't sound as though that's -- that's incorrect.

24 Q Is his current base salary 2.5 million dollars?

25 A I'm not sure his exact base salary today.

1 Q Forgive me, but, again, you are not CFO of this
2 company, correct?

3 A Yes. But I don't recall everyone's base pay. I
4 apologize.

5 Q Okay. He's the CEO of the company. He's not
6 everyone. Is he?

7 A No, actually, no.

8 Q Okay. Do you also recall that two of the
9 retention payments that were supposed to be paid in 2020,
10 2022, '24, and '26 got accelerated such that they were paid
11 in -- such that they've been paid already?

12 A He certainly had some retention payments that have
13 been paid already.

14 Q So he's been paid 6 million out of the 12 million
15 that he was entitled to get paid under his contract in years
16 to come pre-petition.

17 A He has been paid some amounts pre-petition.

18 Q And do you have any reason to doubt that that's 6
19 million dollars?

20 A No.

21 Q Okay. So half of the total retention payments,
22 correct?

23 A Well, I can certainly say that there was amounts
24 paid pre-petition.

25 Q And they were paid again in June or after June of

1 2018 when the contracts were amended.

2 A Probably around that timeframe. I don't recall
3 exactly.

4 MR. TROOP: Excuse me, Your Honor. One second.

5 BY MR. TROOP:

6 Q Did you review the statement of financial affairs
7 of this company before they were filed?

8 A I did.

9 Q Is it true that Mr. Landau received a total of
10 about 9 million dollars in payments the year before the
11 filing?

12 A I'm -- I don't have it in front of me, but I'm
13 sure that's the right number.

14 Q Had you calculated whether as a result of the
15 changes in Mr. Landau's compensation and applying the
16 reductions that have been negotiated with the Creditors'
17 Committee whether Mr. Landau is now getting more or less
18 than he would have gotten had his contract not been amended?

19 A I haven't run any calculations of that sort.

20 Q So you wouldn't be able to confirm or deny that
21 even with the reductions he's getting \$550,000 more out of
22 the retention payments with the reductions than had his
23 contract not been changed and he got the full amounts that
24 he was entitled to under the agreements?

25 A I haven't run those calculations.

1 Q Okay. I'll ask the compensation consultant, then.

2 MR. TROOP: That's it, Your Honor. Thank you.

3 THE COURT: Okay. Any redirect?

4 MR. MCCLAMMY: Thank you, Your Honor. For the
5 record, Jim McClammy of Davis Polk & Wardwell.

6 REDIRECT EXAMINATION

7 BY MR. MCCLAMMY:

8 Q First, good afternoon, Mr. Lowne.

9 A Good afternoon.

10 Q You were just asked some questions about Dr.
11 Landau's compensation. Were you involved in making any
12 decisions related to Dr. Landau's compensation?

13 A I was not.

14 Q To your knowledge, who was responsible for making
15 those decisions?

16 A My understanding is that Dr. Landau's compensation
17 is ultimately the compensation committee and then the board
18 that approves his compensation.

19 Q And that would have been true for his agreement in
20 October 2017?

21 A That is correct.

22 Q And that would have also been true with respect to
23 any amendments or changes that have been made since then.
24 Is that correct?

25 A That is correct.

1 Q Now, Mr. Lowne, I'd like to turn you to some of
2 the questions that you were asked with respect to the
3 incentive programs that are in place by the U.S. Trustee's
4 Office. I believe you mentioned that both programs have
5 been in place for a long time. Is that correct?

6 A That is correct.

7 Q To your recollection, how long was the AIP in
8 place for Purdue?

9 THE COURT: It's in your affidavit already.

10 MR. MCCLAMMY: Okay.

11 THE COURT: I don't need -- we don't need to go
12 over this.

13 MR. MCCLAMMY: Okay. All right. No worries, Your
14 Honor. I will move on from there.

15 BY MR. MCCLAMMY:

16 Q You stated in your declaration that these are
17 performance-based incentive plans. Is that correct?

18 A That is correct.

19 Q And that there's a link between employees'
20 compensation and the achievement of the companies and/or
21 Rhodes' annual business objectives and individual
22 performance, correct?

23 A That is correct.

24 Q And if you turn to your declaration in paragraph
25 15, there's a chart that sets out a number of objective and

1 their subweights. And I believe you were asked some
2 questions about the Purdue debtors operating profit margin
3 of negative 30 million dollars. Do you recall that?

4 A Yes.

5 Q How was that negative 30 million dollar operating
6 profit margin set as an objective?

7 A It was the board-approved budget for Purdue that
8 was approved before the year commenced.

9 Q And when the year commenced, was it thought that
10 that goal would be something that was easily met?

11 A We set a budget to always be -- have some
12 challenges within achieving the budget.

13 Q And what were some of the challenges that Purdue
14 would have faced to try to hit that budget?

15 A I mean, some examples of some of the things that
16 we did this year that were -- we closed down our Treyburn
17 manufacturing facility. We had certainly some staff
18 reductions, albeit on a more limited basis than previous
19 years. We had certain cost reduction targets by function.
20 And obviously we've been operating in the face of some
21 challenges as a company.

22 So it's our attempt to have a profitability target
23 for the business that brings all of our employees together,
24 whether it's their departmental budgets or their functional
25 areas to come together to try and achieve a financial

1 target.

2 Q And the Rhodes debtors' operating profit margin
3 was set at negative 10 million dollars, correct?

4 A That is correct.

5 Q And, again, can you tell us how was that negative
6 10 million dollars set?

7 A That was set before Rhodes became a wholly owned
8 subsidiary of Purdue. They had their own board at that time
9 that was independent of the Purdue board, and that was their
10 original budget approved by the Rhodes board.

11 Q And was that target met?

12 A It will definitely not be met, no.

13 Q Okay. In fact, it's estimated that it will be at
14 75 percent. Is that correct?

15 A That's correct.

16 Q You have some other objectives listed here. I
17 just want to point to your -- draw your attention to a
18 couple of those. There is in your chart in the 30 percent
19 area it says "Progress and achieve the following major
20 milestone subjectives for the top three projects currently
21 in development for Rhodes. Do you see that?

22 A I do.

23 Q And right after each of those three, it's
24 estimated that it would be at 100 percent, correct?

25 A That is correct.

1 Q To your understanding, does that 100 percent
2 number still hold?

3 A I was on a call yesterday with the Rhodes team to
4 review the status of projects, and as of last night, I was
5 informed that the number two or number three on this list
6 are looking as though they may miss by one quarter.

7 Q Okay. So would that change the number then to 75
8 percent for at least two of those?

9 A Yes.

10 Q Okay. I believe you also were asked questions
11 about the 2017 year AIP and whether or not the corporate
12 objective had been met for that year. Do you recall if the
13 corporate objective for 2017 was less than 100 percent?

14 A I apologize. I don't remember by year whether we
15 were higher or lower. I just remember in the last handful
16 of years we -- we've been -- we've had a year or years less
17 than 100 percent.

18 Q You were also asked some questions about the sign-
19 on bonuses with respect to two of the insiders. Do you
20 recall that?

21 A Yes.

22 Q What is your understanding as to why those sign-on
23 bonuses were paid?

24 THE COURT: Again, this is in his declaration,
25 unless you want him to amplify on that somehow.

1 MR. MCCLAMMY: Given the challenges that were made
2 in the public forum, I would like to have an amplify on
3 that.

4 THE COURT: Okay.

5 THE WITNESS: These two individuals in my mind are
6 no different to other individuals that we pay sign-on
7 bonuses to. I mean, we're incenting people to leave their
8 prior employer, to give up vested either annual incentive
9 bonuses or some kind of long-term incentive or equity. And
10 to give that up, we have to financially incent them to join
11 Purdue.

12 BY MR. MCCLAMMY:

13 Q And each of these were agreed with respect to
14 these two individuals prior to their being employed at
15 Purdue. Is that correct?

16 A That is correct.

17 Q And I believe you mentioned in your declaration
18 that it was meant to compensate them for some of the things
19 that they would be giving up, correct?

20 A That is correct.

21 Q And in the case of Mr. Kesselman, in fact, he may
22 have been signing on and taking less than he was giving up
23 by joining Purdue. Is that correct?

24 A That is correct.

25 MR. MCCLAMMY: Thank you. No further questions.

1 THE COURT: Okay. Any re-cross?

2 MR. SCHWARTZBERG: No, Your Honor.

3 THE COURT: Mr. Lowne, I have one -- could we go
4 back to the corporate performance targets that are on page
5 12 of your second supplemental declaration?

6 THE WITNESS: Yes.

7 THE COURT: Are those -- is the 30 million -- I'm
8 sorry, the negative 30 million target, can you -- I think I
9 heard your answer to this, but I want to just make sure. Is
10 that used for any other purpose than setting the AIP of 100
11 percent figure?

12 THE WITNESS: So it's used, and it's our board-
13 approved budget. So we'll have our financial reporting
14 every month, whether it's on a department basis or a total
15 company is reported against the -- the various makeups of
16 the 30 million dollars.

17 THE COURT: Okay. And when that number is set, do
18 the participants in the AIP know how that relates to their
19 target, or does that come later?

20 THE WITNESS: So we typically share the -- we call
21 it our corporate performance scorecard. That's shared with
22 the employees after we have the board approval of the
23 budget. But certainly everyone in the company that is
24 within a -- sorry, I don't want to say everyone in the
25 company. Certainly every department head knows their budget

1 for their department and how that rolls up into the total
2 performance or budget of our company.

3 THE COURT: My question was -- let me back up.
4 I'm assuming that each of those people has some input in
5 advising their bosses and ultimately through them, the
6 board, as to what a reasonable, if somewhat aggressive
7 budget would be, correct?

8 THE WITNESS: That is correct. We have a very
9 lengthy and detailed process to come up with the budget.

10 THE COURT: And are there checks on what they
11 recommend? Do other parties look at what they recommend as
12 far as their share of that?

13 THE WITNESS: So we have a detailed review of the
14 budget before we get to the board with senior members of the
15 management team, which would be our CEO, myself, Marc, for
16 example, and we literally have a number of days of meetings
17 with every single functional head where they come with their
18 budget proposal, and we have pushbacks and adjustments to
19 their budget where -- in areas where we're not comfortable
20 with their budget proposals. So that's the type of process
21 we go through.

22 THE COURT: And is their share or their
23 entitlement to compensation under the AIP and all involved
24 in that process, or is the AIP process separate from that
25 process that you just described to me?

1 THE WITNESS: Well, the AIP process is separate in
2 the sense that all employees are paid out based upon the
3 totality of the corporate performance, objective scorecards,
4 and every single employee has the same contribution to their
5 annual bonus based upon performance against, for example, in
6 this case the 30 million loss or operating profit margin.

7 THE COURT: I guess, but my question is a little
8 different, which is how do you ensure that the information
9 they provide to you upon which you can build a budget is not
10 tainted by their desire to get as much as they can as far as
11 an AIP?

12 THE WITNESS: That's the very detailed process we
13 go through of reviewing their budget with senior members of
14 the management team and adjusting their budget so that they
15 truly are stretch objectives, whether it's timelines of our
16 R and D development, or whether it's the expenses or
17 headcount that we're authorizing people to either hire
18 against, or in recent years it's been reductions in
19 operating expenses that have required people to take actions
20 to achieve the operating expense profile that we've set for
21 the company.

22 THE COURT: So are there times when you ask them
23 for more results than they proposed?

24 THE WITNESS: Significantly more. And I mean over
25 the last couple of years, I mean, we've unfortunately had to

1 reduce our workforce by about 67 percent directionally,
2 which has been obviously tough for many people.

3 THE COURT: Okay. Any questions on that?

4 MR. SCHWARTZBERG: Your Honor. I just have a few
5 follow up.

6 THE COURT: Okay, that's fine.

7 REDIRECT EXAMINATION

8 BY MR. SCHWARTZBERG:

9 Q I think on redirect your counsel asked or you
10 elicited, there are various reasons why you came up with the
11 negative 30 AIP. And three of them -- and maybe I wrote
12 them down wrong, so correct me if I'm wrong, was staff
13 reductions, closing down the Treyburn facility, and cost
14 reduction targets. Is that correct?

15 A I described certain things in terms of why we
16 performed better than the 30 million. I mean, this 30
17 million had some cost reduction targets in it. The reason
18 we're at a loss this year in the budget was because of the
19 legal fees burden of the company.

20 Q But when did the staff reductions take place?

21 A Most of the staff reductions happened in 2018, but
22 we have had on a limited basis staff reductions in 2019.

23 Q And the cost reductions, when did they take place?

24 A We're continually looking at continuously
25 improving the cost profile of the business. So we've done

1 cost reduction initiatives every year that we're in business
2 as a company.

3 Q So that's something you do -- it's taken into
4 consideration every budget.

5 A Every budget we --

6 Q Or every operating profit margin.

7 A Every time we do an annual budget we're always
8 looking for operational efficiency initiatives and cost-
9 saving initiatives where we can.

10 Q And closing down of the Treyburn facility, that
11 was post-petition, correct?

12 A We haven't actually closed down the facility yet.
13 The deal was done in August, and we continue to operate the
14 facility through the end of November, and then we have a
15 two-week window in December to remove certain items of
16 machinery and relocate them to our Wilson facility.

17 Q Thank you.

18 THE COURT: Okay. You can sit down, Mr. Lowne.
19 Thank you. Okay. And is Ms. Gartrell here?

20 MS. GARTRELL: Yes, Your Honor.

21 THE COURT: If you could come up to the stand,
22 please. Could you raise your right hand, please?

23 //

24 //

25 //

1 WHEREUPON,

2 JOSEPHINE GARTRELL,

3 called as a witness, and having been first duly sworn to

4 tell the truth, the whole truth and nothing but the truth,

5 was examined and testified as follows:

6 THE COURT: And could you spell your name for the
7 record?

8 THE WITNESS: J-O-S-E-P-H-I-N-E, G-A-R-T-R-E-L-L.

9 THE COURT: Okay. And, Ms. Gartrell, you
10 submitted a declaration intended to be your direct testimony
11 in this -- in connection with this motion. It's dated
12 December 2. You understand that would be your direct
13 testimony?

14 THE WITNESS: I do.

15 THE COURT: And is there anything that you wish to
16 change?

17 THE WITNESS: No.

18 THE COURT: Okay. So I'll admit as the direct
19 testimony of Ms. Gartrell.

20 DIRECT EXAMINATION

21 BY MR. SCHWARTZBERG:

22 Q Good afternoon.

23 A Hello.

24 Q My name is Paul Schwartzberg. I'm an attorney
25 with the U.S. Trustee's Office. Do you have a copy of your

1 declaration?

2 A Not in front of me.

3 MR. HUEBNER: Would you like me to provide one?

4 MR. SCHWARTZBERG: Sure. I could give you my copy
5 or Counsel could -- yeah, I can -- is it okay if I approach
6 the witness, Your Honor?

7 THE COURT: Yes.

8 THE WITNESS: Thank you.

9 BY MR. SCHWARTZBERG:

10 Q Can I refer you to paragraph 13?

11 A Sure.

12 Q I'll just read it, so it's easier, the part that
13 I'm -- "As part of this process, Willis Towers Watson
14 conducted pay benchmarking by gathering and analyzing
15 relevant market compensation data, including total direct
16 compensation offered by participants in Willis Tower
17 Watson's 2018 pharmaceutical executive compensation and
18 middle management professional and support service."

19 A Yes.

20 Q Do you know how many pharmaceutical companies are
21 in the United States?

22 A Yes. They are in the United States or they are
23 global companies that have operations in the United States.

24 Q I'm sorry. You might not have heard my question.
25 How many pharmaceutical companies are there in the United

1 States?

2 A Oh, well, thousands.

3 Q Okay. Thousands?

4 A Thousands.

5 Q How many pharmaceutical companies participate in
6 the Willis Tower Watson 2018 pharmaceutical executive
7 compensation in middle management professional and support
8 service?

9 A So it varies between the two. As you can see,
10 there is a split between the executive survey and the middle
11 management and professional survey. So in the middle
12 management and professional survey, I believe it's around
13 84. It's over 80, under 90 and similar to the executive,
14 although that one has a few more participants.

15 Q And I did some poking around on the web. Is it
16 correct that it cost \$8,500 to participate in the survey?

17 A I don't work in the data services department. So
18 I can't say. What I can tell you is that you do have to be
19 a participant in the plan to access the data.

20 Q And to be a participant you have to pay?

21 A I don't know whether you have to pay. Some of our
22 surveys you have to pay for and some you don't.

23 MR. SCHWARTZBERG: I don't have any more
24 questions, Your Honor.

25 THE COURT: Okay. Any questions?

1 MR. TROOP: I do.

2 CROSS-EXAMINATION

3 BY MR. TROOP:

4 Q Ms. Gartrell, my name's Andrew Troop. I recommend
5 the -- so-called dissenting states.

6 A Mm-hmm.

7 Q I'd like to focus you on paragraph 44.

8 A Forty-four, okay.

9 Q Forty-four.

10 A Mm-hmm.

11 Q And in particular, the carryover onto page 18.

12 A Yes.

13 Q And just so I -- again, so I can understand, and
14 my questions again will be focused on Dr. Landau.

15 A Okay.

16 Q Some of the information that you've heard. And I
17 apologize, Your Honor, I believe that I called Dr. Landau,
18 Mr. Landau in questions before, and I meant no disrespect to
19 his title.

20 Could you just briefly describe to me what -- I'm
21 looking at the chart --

22 A Okay.

23 Q -- that starts with CEO TTDC.

24 A Yes.

25 Q Could you tell me what -- tell The Court what that

1 means?

2 A Yes. That means the CEO's total target direct
3 compensation. And it's listed in millions of dollars, which
4 is why it has the figure right there below the heading.
5 This particular table is based on the renegotiated contract
6 or renegotiated compensation, which reflects the reduction
7 in the AIP, which is the annual incentive plan, as well as
8 the zero-out of the LTRIP.

9 Q Okay. And then I'm going to try to run this
10 quickly just so I --

11 A Okay.

12 THE COURT: I'm sorry. I just want to make this
13 clear.

14 MR. TROOP: Yes, Your Honor.

15 THE COURT: So the 3994 is the current target
16 under the agreement with the Creditors' Committee?

17 THE WITNESS: That's correct.

18 THE COURT: Okay.

19 BY MR. TROOP:

20 Q Before we leave that total --

21 A Target direct compensation.

22 Q -- target direct compensation, would that include
23 retention payments that there were to be paid in a
24 particular year?

25 A It does not include retention payments. It only

1 includes base salary, annual incentives and long-term
2 incentives.

3 Q Does your survey calculate or contemplate, account
4 for retention payments in determining overall
5 appropriateness of compensation?

6 A Generally speaking, compensation surveys that
7 report on target total direct compensation do not take into
8 consideration retention. They are inclusive of the three
9 items that I mentioned earlier, which is base salary, annual
10 incentives, and long term.

11 Q I understand you said generally. My question was,
12 does your surveys --

13 A No.

14 Q -- account for that information?

15 A No.

16 Q So just help me with a little math for a second.
17 If the retention payment that was supposed to have been made
18 to Dr. Landau in 2020 had been paid, it was 3 million
19 dollars, in connection with this reduced projected
20 compensation, right, his total compensation for the year
21 would have been 6.94 million dollars. Is that math correct?

22 A It's technically correct, although we would have
23 somehow figured out to spread the retention over the
24 retention period. So if I were thinking of it from a total
25 compensation perspective, I would probably think of

1 certain -- if it's a three-year period, I might put a --
2 think of it as a million dollars per year. But yes, if
3 you're thinking of exactly how much he would have been paid
4 in 2020 with the addition of the 3 million, then you are
5 correct.

6 Q And assuming -- again, I'm just trying to
7 understand the concept here.

8 A Mm-hmm.

9 Q If that compensation would have been 6.9, let's
10 say 7 million dollars, would be easier for me to say, 7
11 million dollars, that would put him pretty close -- if I'm
12 understanding this, what you're identifying as the 75th
13 percentile of comparable compensation.

14 A Well, the only problem with that analysis is that,
15 that P75 again only includes the base salary, the AIP, and
16 the LTRIP, and we don't have any information about what
17 other incumbents in the surveys have from a retention
18 perspective. So they could have their own retention bonus
19 agreements and we wouldn't -- that would not be inclusive in
20 that P75 number.

21 Q Okay. So then is it fair to say that your
22 analysis, in fact, doesn't compare the actual cash that Dr.
23 Landau will have received against the actual cash that other
24 CEOs receive?

25 A Our analysis is an apples to apples comparison of

1 the three elements of pay that are reportable in target
2 total direct compensation, and it does not take into
3 consideration the retention payment because we don't have
4 access to that data.

5 Q Okay. Just 'cause I'm a simpleton, so the answer
6 to my question was yes.

7 A Yep.

8 Q Okay. Let's continue on that trend for just a
9 second.

10 A Okay.

11 Q In looking at Dr. Landau's, the CEO's
12 compensation, did you, in fact, take into account the 9
13 million dollars that he was paid over the last year as
14 reflected in the debtors' statement of affairs?

15 A I did not. This is a forward-looking analysis of
16 only total target direct compensation.

17 Q So if he would have been prepaid amounts in the
18 last year, if I understood what you said before, you would
19 have actually spread those payments out over a period of
20 time, probably in this case, future-looking, to try to
21 create a picture of what total compensation would --

22 A No, I would be, I would be thinking about the
23 retention payments over the course of the retention period.
24 There are different methodologies as far as how you consider
25 those retention payments, but we did not consider the

1 retention payments for purposes of any of our analysis.

2 Q Okay. In connection with your surveys, do you
3 account for whether or not the CEO has been named as a
4 defendant in connection with litigation like Dr. Landau has
5 been named a defendant?

6 A No. Survey data does not take into consideration
7 alleged wrongdoing or no wrongdoing or anything else that
8 has to do with the CEO.

9 Q So then you have no idea whether or not your
10 comparables are for people who are comparably situated to
11 Dr. Landau in connection with claims being asserted against
12 them?

13 A So companies pay their compensation to their
14 incumbents based on a variety of factors, like criticality
15 and performance and tenure and experience, but our
16 comparables don't take those into consideration. It's for
17 the company to assess those items and figure out where they
18 should place their executive with respect to the market
19 data.

20 MR. TROOP: Your Honor, just one second, please.
21 I have no further questions.

22 THE COURT: Okay. Is there any --

23 MR. MCCLAMMY: A couple questions on redirect,
24 Your Honor.

25 THE COURT: Sure.

1 REDIRECT EXAMINATION

2 BY MR. MCCLAMMY:

3 Q Again, for the record, Jim McClammy from Davis
4 Polk. Ms. Gartrell, just a couple of questions to follow up
5 on the questions that Mr. Troop asked.

6 A Mm-hmm.

7 Q First, what is your understanding of why companies
8 pay retention payments?

9 A They pay retention payments because they have a --
10 they have identified a critical employee that they need for
11 a variety of different reasons, and they expect to retain
12 that person to keep them in their seat for a specific period
13 of time that they determined critical.

14 Q Okay. And you view that as distinct from direct
15 compensation.

16 A I do.

17 Q And if it were truly a retention payment, you
18 would include that as part of your analysis of comparing
19 direct compensation between your sample group. Is that
20 correct?

21 A We would not include that in the TTDC analysis,
22 no.

23 Q Okay. And if you look at your chart in your
24 declaration on page 18 --

25 A Mm-hmm.

1 Q -- which is the carryover of paragraph 44, you
2 mentioned that the 3.94 million dollar number, that is
3 already accounting for the reductions that have been agreed
4 to. Is that correct?

5 A That's correct.

6 Q And that places the salary at 12 percent above the
7 25th percentile, but 21 percent below the 50th percentile.
8 Is that correct?

9 A Almost. It places the total direct compensation,
10 not just the salary. So yes, it places the total direct
11 compensation, which includes the base salary, the bonus, and
12 the LTRIP, which is non-existent at this point, and that's
13 where it's placed in the market data.

14 Q Okay. That's the median?

15 A It's between the median and -- or it's between P25
16 and the median, but it's actually closer in to the P25.

17 Q I'm sorry. When it says P50, is that the mean,
18 the median?

19 A That's the median.

20 Q The median.

21 A So it's 25th percentile median and 75th
22 percentile.

23 Q Okay. And did Mr. Landau's total direct
24 compensation -- I'm sorry, Dr. Landau's total -- if Dr.
25 Landau's total direct compensation were reduced even further

1 to take away the AIP, it would be his base salary of 2.6
2 million dollars. Is that correct?

3 A That's correct.

4 Q And that would place Dr. Landau's total direct
5 compensation at even below the 25th percentile. Is that
6 correct?

7 A That's correct.

8 Q And nearly 50 percent below the mean. Is that
9 correct?

10 A That's correct. Median.

11 Q The median, I'm sorry.

12 A Yes.

13 Q And do you view that as competitive?

14 A No.

15 Q What do you consider competitive compensation to
16 be? What range is considered to be competitive?

17 A Well, it depends on the particular needs of a
18 company and where they feel that person should be placed,
19 but somewhere around median is considered competitive, or
20 median 75th percentile.

21 Q Okay. So even at his current contemplated total
22 direct compensation at the 3.94, that might be considered
23 less than competitive. Is that correct?

24 A That's correct.

25 MR. MCCLAMMY: Thank you, Your Honor. No further

1 questions.

2 THE COURT: Okay. Anything else?

3 MR. TROOP: I'm sorry, Your Honor. There's just
4 one thing that became unclear to me.

5 THE COURT: Okay.

6 RE-CROSS-EXAMINATION

7 BY MR. TROOP:

8 Q In calculating Dr. Landau's total --

9 A Yes. Direct compensation.

10 Q -- direct compensation, did you get a breakdown
11 from the debtors as to what was included in that, or did
12 they just give you a total number?

13 A Well, this particular number is based on the data
14 that was supplied to us, so, and it's based on the most
15 recent agreement. So it's modified from the original. So
16 it is a base salary, 50 percent of his AIP, and that's
17 expressed as 50 percent of his base and no LTRIP. So
18 that --

19 Q And so would it include a housing allowance if he
20 was allowed one?

21 A No. Total target direct compensation does not
22 include executive benefits and perquisites.

23 Q Would it include supplemental income?

24 A No.

25 Q Would it include relocation expenses?

1 A No.

2 Q Would it include access to private jet
3 transportation?

4 A No.

5 MR. TROOP: I think that's it, Your Honor, thank
6 you.

7 THE COURT: Okay.

8 MR. SCHWARTZBERG: Nothing further, Your Honor.

9 THE COURT: All right. You can step down.

10 THE WITNESS: Thank you.

11 THE COURT: Thanks.

12 MR. HUEBNER: So, Your Honor, in terms of order of
13 operations -- well, just one clarifying thing, which Mr.
14 Schwartzberg asked about that I was able to get the answer
15 to background, just for his benefit, as the witness did not
16 know it, none of the 10 members who attend executive
17 committee meetings who are not insiders are board-appointed
18 officers. That was a question that Mr. Lowne did not
19 know -- I checked with the assistant corporate secretary,
20 and that's the answer.

21 I assume that supporter should go forth and then
22 objectors, and then we'll finish up.

23 THE COURT: Okay.

24 MR. TROOP: Your Honor, I apologize, but between
25 the car ride here and the time that we've been here, I need

1 a five-minute break.

2 THE COURT: Okay. That's fine. Let's get back
3 together a little after 4:00.

4 MR. TROOP: Thank you.

5 (Off the record.)

6 THE COURT: Okay. We're back on the record at In
7 Re Purdue Pharma.

8 MR. MCCLAMMY: Your Honor, briefly, Ms. Gartrell
9 has just finished testifying has a flight to catch.

10 THE COURT: That's fine.

11 MR. MCCLAMMY: -- she's no longer needed.

12 THE COURT: I -- that's correct.

13 MR. MCCLAMMY: Thank you.

14 THE WITNESS: Thank you.

15 MR. MCCLAMMY: Thank you, very much, Your Honor.

16 THE COURT: No witnesses are needed further.

17 Okay. I'm happy to hear a brief argument from the
18 company's -- if people supporting the relief that's being
19 sought wish to speak, I'm happy to hear them, too.

20 MR. PREIS: Good afternoon, Your Honor, Arik Preis
21 from Akin Gump Strauss Hauer & Feld on behalf of the
22 Creditors' Committee. Your Honor, before I go through kind
23 of my remarks about my support, in conversation with my
24 colleagues we had a disagreement.

25 At some point I think earlier some -- there was a

1 mentioning of the 10 million of savings between the pre-
2 bankruptcy various plans and what the new deal is. And I
3 thought that you said you were unclear how we got to that 10
4 million, like how it adds up to 10 million, and maybe I
5 misheard.

6 THE COURT: No, I, I think I understand it.

7 MR. PREIS: Okay. Okay. I just didn't -- so then
8 I won't --

9 THE COURT: And no one has questioned it.

10 MR. PREIS: Okay.

11 THE COURT: So I'm comfortable with that.

12 MR. PREIS: Okay. I'm going to dispense, then,
13 with that.

14 THE COURT: Okay.

15 MR. PREIS: Your Honor, I think it's important to
16 recall who the Creditors' Committee is. It's two trade
17 creditors of PBGC, an insurance carrier plaintiff, a
18 hospital, but four individuals. One individual who is a
19 victim, one individual whose son is a victim, one
20 grandfather of a child with NAS, and one mother of a child
21 with NAS.

22 I think it's fair to say without breaking
23 privilege that had the debtors sought to have this motion
24 approved the first two weeks of the case when we had been
25 first formed, we would have been objected. In fact, we

1 probably would have objected months into the case.

2 We had a lot of difficult conversations as a
3 Creditors' Committee about the relief requested here, and it
4 has been an education. And that is why, as Mr. Huebner
5 said, we asked for a lot of information. And I think it's a
6 testament to the committee that they were able to put aside
7 a lot of their own personal views to get to the deal that we
8 struck.

9 That isn't to say it's a perfect deal, and it's
10 not to say something that we wouldn't have liked more, but
11 it's what we were comfortable with for something that we
12 felt wouldn't harm the debtors' enterprise. So I'd like to
13 go through kind of briefly why we were not comfortable with
14 where we landed.

15 So at the beginning of the case I think you know,
16 this was before we got here, that there was a lot of press
17 about the fact that there were 40 million dollars plus of
18 bonuses and incentive plans. We weren't obviously involved,
19 but we read that. And the first thing we did when we got
20 involved and we asked the debtors about this, they said to
21 us two things.

22 First thing is, these incentive-type plans are
23 basically part of the employee's compensation. In other
24 words, if you take away the money, these employees will be
25 getting 50 percent, 60 percent, the comp of a comparable

1 company. And we didn't know yet. We hadn't done any work,
2 and so we just -- we listened.

3 The second thing the debtors said was most of the
4 money, most of that 47 million dollars is going to non-
5 insiders. After getting past the injunction hearing and the
6 stipulation with the debtors and the Sacklers and litigating
7 the issue that we we're here for two weeks ago, we turned
8 our attention to these issues. And around the second week
9 of November, about the same time that the dissenting states
10 got the information, we got the information about all of
11 these programs.

12 We got the various Willis Towers Watson reports.
13 We had a number of calls with the debtors. We have our own
14 financial advisors who did their own work and did their own
15 comparables. And I can say that after doing the work, we
16 agree kind of with some of the things the debtor said, but
17 frankly we didn't agree with some of the other things. And
18 that's why we said to the debtors we wanted three things
19 changed from the programs.

20 The first was that there should be no payments
21 made for anything that occurred 2017 and backwards. So
22 obviously the LTRIP is the only program that falls into that
23 category. And because the LTRIP rewards for performance of
24 the company prior to 2018, we said to the debtors, look, all
25 of that money needs to come out of the program.

1 And the debtors said to us, well, we can't do that
2 exactly because some of that money comes from not really
3 lower level employees. And so we'll get to it in a second
4 how we basically got that money back elsewhere.

5 The second thing we said to the debtors is look,
6 this case is going to last potentially a while. We don't
7 want it to, but it looks like it potentially will. We need
8 employees to stay. And if that means converting this to a
9 retentive plan, so be it. We understand that we're not in a
10 situation where we want to reward people for business
11 incentives, but we do want the enterprise not to be harmed.

12 And the third is our overall sense just looking at
13 the total dollar figures that the numbers should come down.
14 So we began negotiations with the debtors, and as Mr.
15 Huebner correctly points out, the negotiations were -- we
16 went a few rounds, a lot more than I think we're used to.
17 So how did we address each one of these?

18 On the first one, so no employee with a title of
19 vice president or above is receiving any payment based on
20 the company's performance from -- prior to 2018. In
21 addition, there is a portion of the non-insiders lower than
22 VP who are receiving payments as a result of the company's
23 performance prior to 2018. It's a small amount.

24 What we said to the debtors is if we don't want to
25 take the money from them because frankly they probably had

1 nothing to do with any of the actions of the company that
2 are alleged to have occurred, take that money elsewhere.
3 But we have to get back all of that value. And indeed
4 that's what happened.

5 The second thing about changing the plans to make
6 them retentive as opposed to incentive, there's a bunch
7 of -- as you know there's a payment schedule and clawback
8 mechanics. And this is important because for the non-
9 insiders they receive their full payment on April 1, but
10 then there's a clawback on 7/1 if they're not there.

11 For the insiders, they actually have to wait for
12 their payments. They only get 50 percent on 4/1 and 50
13 percent on 7/1. And then they're subject to a clawback of
14 25 percent on 9/1.

15 For the CEO, and we'll get to Dr. Landau in a
16 second, obviously his payments are 6/1 and 9/1. There's no
17 clawback because the second payment's on 9/1. Again, we
18 felt that was more applicable in this situation as opposed
19 to having incentive-based payments.

20 Third, the overall reduction, as I mentioned, you
21 said you understand how we got to the 10 million. So I'm
22 not going to go through that, but that's 10 million off of
23 47, which is about -- it's a little less than a quarter.
24 It's about 21.2 percent.

25 The non-consenting group has objected for the two

1 reasons you've heard --

2 THE COURT: And can I just say, when you say 47,
3 that includes everything, right? That's not just the AIP
4 and the -- I mean, that includes --

5 MR. PREIS: It's the AIP, the LTRIP, the non-
6 executive retention plan that there's been no discussion
7 about, but that's also part of it.

8 THE COURT: Right. Right.

9 MR. PREIS: And it includes the two sign-on
10 bonuses. So there's four, but there's only two for
11 insiders, yes.

12 THE COURT: Okay. All right.

13 MR. PREIS: The underlying premise of the Ad Hoc's
14 objection is that no payments -- well, the underlying
15 premise of part of their objection is that no payments
16 should be made to Mr. Landau -- Dr. Landau, unless and until
17 he's cleared of any wrongdoing.

18 As I said earlier, obviously if that ultimately is
19 what The Court decides that that shouldn't be -- like
20 that's -- if that doesn't harm the debtors' enterprise,
21 which we believe, based on everything we've seen that it
22 could, that's why we cut the deal that we did. But to be
23 clear, when one reads that objection, one may come to the
24 conclusion that we didn't consider this, that we didn't
25 consider the fact that he is a defendant, but we did.

1 And Mr. Huebner went through the various things
2 that we negotiated, but I want to hit very specifically the
3 point that I -- that made us the most comfortable, which is
4 the following.

5 Right now, the preliminary injunction ends April
6 8. Dr. Landau doesn't get his first payment until June 1.
7 Therefore, if at any time after the injunction is over, if
8 the dissenting states or anybody wants to add the claim
9 against Dr. Landau for his -- to enjoin the payment to him,
10 they actually have the ability to do that within that 45-
11 day, or 50-day period. And that is something that frankly
12 we got comfortable with.

13 THE COURT: Enjoined where?

14 MR. PREIS: They could -- because they will have
15 the -- because the injunction against him will have ended.

16 THE COURT: No, but what would they -- okay. I
17 guess I understand.

18 MR. PREIS: And look, we also --

19 THE COURT: Although, I don't know whether the
20 court in Massachusetts could enjoin -- judgment attachment.

21 MR. PREIS: But they will have the ability --

22 THE COURT: The Supreme Court dealt with those
23 issues a few years ago, so.

24 MR. PREIS: But they will have the ability to come
25 and try to stop it at that point. And they also have the

1 ability that we, that we have negotiated with the debtors as
2 well, which is if at any time he's found liable, the judge
3 is able to consider that --

4 THE COURT: Right. That's in the order.

5 MR. PREIS: Correct.

6 THE COURT: The proposed order.

7 MR. PREIS: So, Your Honor, the estate made -- I
8 would just say two other things about what was raised by --
9 in some of the cross-examination. Some of it at best shows
10 that if you were to look back at Dr. Landau's 2018 agreement
11 that indeed his new payments are \$550,000 more than he would
12 have received in 2018 had you applied that agreement.
13 That's obviously not the facts we're in, right, where he has
14 a new agreement and we're living off of those facts.

15 Second thing, a lot of these -- the issues that
16 Mr. Troop raised on cross-examination, those are potential
17 causes of action and avoidance actions against for any sort
18 of amounts that were paid during the one-year period to Dr.
19 Landau. Those are causes of action that are not released
20 under this order. And we -- to the extent that those causes
21 of action are valid, we would vigorously prosecute them. So
22 I don't think there's anything being given up by the fact
23 that there were payments made to Dr. Landau in the year
24 prior to the Chapter 11 filing.

25 In light of all of this, Your Honor, the committee

1 believes that what was negotiated is reasonable. Is it
2 perfect? It's not perfect, but it's reasonable and fair,
3 and that's why we support it.

4 THE COURT: Okay. Okay. Why don't I hear briefly
5 from the objectors?

6 MR. SCHWARTZBERG: Good evening, Your Honor. As
7 we set forth in our papers on the first day, we believe that
8 the bonus must comply with the section 503(c)(1). These are
9 transfers to insiders, and we believe --

10 THE COURT: Well, which are you -- I'm not even
11 sure what you're objecting to at this point.

12 MR. SCHWARTZBERG: We're objecting to the
13 payments, the incentive payments and the long-term payments
14 to the 10 insiders that were referenced in the initial
15 supplement.

16 THE COURT: Okay.

17 MR. SCHWARTZBERG: And we believe -- we don't
18 believe they qualify under 503(c)(1). First, the debtors
19 don't even list the individual metrics for the annual
20 incentive plans. So it makes it difficult, if not
21 impossible to determine if they represent difficult hurdles
22 or even reasonable. And then we also -- as the testimony
23 showed, the metrics are so low that they seem to be more of
24 retentive basis than, as they're calling them, an incentive
25 plan.

1 For example, although they set a metric at 30
2 million dollars as the target metric, the threshold metric
3 goes down to 90 million -- negative 90 million, excuse me.
4 And for a metric for the business plans, where they need to
5 complete three business plans, a bonus is still going to be
6 paid or they're going to get credit towards the bonus if
7 only one plan is completed.

8 And in fact, actually, Your Honor, the testimony
9 showed that in every year a bonus has been paid on the
10 incentive plans, and in no year was nothing paid because the
11 metrics were not met.

12 Similarly, with the long-term result plans, the
13 debtors don't list the metrics for the 2017 Rhodes long-term
14 results plan for -- they don't list the 2017 or the 2018
15 metrics, once again making it hard to determine if they're
16 difficult hurdles or if the plan is even reasonable. And
17 once again, the testimony shows that every year a bonus is
18 paid under the long-term results plan, and no year was the
19 metrics not met.

20 THE COURT: Well, when you say that, the metrics,
21 you mean in no year there was no bonus paid.

22 MR. SCHWARTZBERG: Correct.

23 THE COURT: That's different than saying in no
24 year was the metrics -- were the metrics not met, 'cause
25 they were -- there was definitely testimony --

1 MR. SCHWARTZBERG: I think not, not met. In no
2 year were they -- did they ever fall below the threshold.
3 For instance, in no year --

4 THE COURT: But the -- what we're talking about
5 here is in all likelihood a full bonus for Purdue and a 75
6 percent bonus for Rhodes, right?

7 MR. SCHWARTZBERG: Based on the metrics that were
8 estimated for 2019.

9 THE COURT: Right.

10 MR. SCHWARTZBERG: Correct.

11 THE COURT: Okay. So I just -- I think you're
12 using threshold and metrics loosely. There's a chart where,
13 yes, if the company does considerably worse than that, which
14 is not what is anticipated on December 4, so we're pretty
15 close to knowing, they still would get something. But I
16 think what we should be dealing with is the reality, which
17 is the 100 percent and the 75 percent.

18 MR. SCHWARTZBERG: Well, if you --

19 THE COURT: And is that somehow impermissible
20 under 503(c)(1)?

21 MR. SCHWARTZBERG: Well, I believe, Your Honor,
22 that they set the threshold so low that every year there's a
23 guaranteed payment.

24 THE COURT: Some payment, but not the full
25 payment.

1 MR. SCHWARTZBERG: That's correct.

2 THE COURT: But let me explore that before we --
3 is salary retentive?

4 MR. SCHWARTZBERG: Obviously, Your Honor --

5 THE COURT: It's not, right? I mean, it's not
6 barred by being retentive.

7 MR. SCHWARTZBERG: Correct.

8 THE COURT: So the testimony, which I think is --
9 I'm leaving Dr. Landau out of this for now, but the
10 testimony is to everyone else, which I think is unrefuted,
11 is that without this, which you're correct, there's a
12 expectation of getting payment every year in some amount.
13 Sometimes it's 100 percent. There have been some years
14 where it was over 100 percent. There have been years when
15 it was less than 100 percent.

16 But there was an expectation every year, whether
17 it was 30 years, 20 years, or 10 years, depending on the
18 particular plan, that there would be a payment in that type
19 of range. And the Towers current testimony is that even
20 with that they're compensated at the -- well, it's like 6
21 percent above the mean.

22 MR. SCHWARTZBERG: Well, Your Honor, regarding
23 Towers --

24 THE COURT: Before that, before the reductions
25 with the committee -- below the mean -- excuse me, before

1 the reductions with the committee. So to me this seems a
2 lot more like salary than a bonus plan, even though it's
3 referred to as a bonus plan. It clearly -- to do really
4 well, to get above the mean, they have to do really, really
5 well. They have to get like 150 percent.

6 MR. SCHWARTZBERG: Your Honor, I do believe they
7 are bonus plans. They have separate documents setting
8 forth --

9 THE COURT: They're called a bonus plan, but in
10 practical terms it really seems like salary with the fact
11 that -- however, there's a performance element to it where
12 it goes up or down on the -- not even the margins, on
13 depending on how the company performs.

14 It can go well above 100 percent. It can go well
15 below 100 percent. It's unlikely that it would go to zero.
16 In fact, it never has, but it has gone both below and above
17 100 percent. And at 100 percent, before the agreement with
18 the articular Creditors' Committee, they're still somewhat
19 below the mean, which the uncontroverted testimony says is
20 competitive.

21 So I appreciate that you can phrase this in a way
22 to say that this is a bonus program, but if the bonus is to
23 just get you -- if the company does what is, as I questioned
24 Mr. Lowne, you know, meets what is a rigorous expectation or
25 an expectation that's arrived at through a rigorous process

1 and it's used for a lot of other measurements of the
2 company, they're just going to get what makes them in the
3 middle, makes them competitive. To me that's not a bonus.

4 MR. SCHWARTZBERG: Your Honor, just --

5 THE COURT: Even though it's called a bonus, it
6 doesn't -- and I think that's what persuaded the committee
7 that -- all right, you see the newspaper story that says
8 that Purdue plans to make 40-some million dollars in
9 bonuses, it really isn't that -- if you look at that story,
10 if you scratch the surface of that story, that's not the
11 case. Particularly as negotiated by the committee where
12 it's going to be guaranteed to be less than the mean
13 compared to their competitors who -- in terms of what you
14 know they're going to be getting as far as their
15 competitors.

16 So they can look at, I don't know, they --
17 whatever 5,000 pharmaceutical companies are out there or the
18 84 and say, well, you know, they know they're going to get
19 this amount. We know today that we're going to get it. We
20 didn't know it when the targets were set. It happened that
21 we're going to get it, although in fact now we're not going
22 to get it because it's a lower amount, and it's over time.

23 I just -- there's a -- I think, to me, I have a
24 serious question about whether it is a positive bonus as
25 opposed to a negative bonus. I mean, you know, the risk

1 they run is they get less than their competitors. So I
2 appreciate that this is -- to get 100 percent here is not to
3 win the Heisman Trophy, I understand that. You know, this
4 area is filled with sports metaphors, the layups and -- this
5 isn't the Heisman Trophy to get 100 percent.

6 But at the same time, you know, it's -- to play in
7 the same league that you'd be playing in to get the Heisman
8 trophy, they have to get this. It's not like they're
9 somehow jumping ahead to, you know, to some super league.

10 MR. SCHWARTZBERG: The only point I would like to
11 make just to -- since Your Honor's relying on the market
12 analysis, they indicated there are thousands of participants
13 or thousands of -- only 84 participated.

14 THE COURT: That's a lot.

15 MR. SCHWARTZBERG: If there were --

16 THE COURT: That's a big survey. I mean, this is
17 a billion dollar company. How many -- you didn't ask for
18 this, but how many companies in this space are over the
19 market cap of this company?

20 MR. SCHWARTZBERG: I think there are, and I could
21 be wrong, but I think there are about 684 that are over 500
22 million.

23 THE COURT: Okay. Well, that's more than --
24 that's smaller than this company. I'm looking at the --
25 anyway, that record is just not -- I mean, if you're

1 basically saying that their survey was too narrow, I don't,
2 I don't buy that. I just don't, I don't see that. That's a
3 lot of companies.

4 MR. SCHWARTZBERG: The last point I need to make,
5 Your Honor, regarding the sign-on bonuses.

6 THE COURT: Right.

7 MR. SCHWARTZBERG: They were entered into pre-
8 petition. Clearly there's no hurdle here. I believe the --

9 THE COURT: But let's stop. They're entered into
10 pre-petition. I don't, I don't get it.

11 MR. SCHWARTZBERG: Then --

12 THE COURT: I mean, look. If I accepted the U.S.
13 Trustee's objection, right, and many of these people left
14 because they make more at another company, and they're mad
15 because they were pretty much assured that they'd get
16 something above 50 percent, let's say of this, what's being
17 called a bonus.

18 As Mr. Lowne's declaration says, the company would
19 be hiring someone else and paying more, right? And that
20 wouldn't be objected to, would it? How could complying with
21 Congress' demand lead to the company not being able to hire
22 someone as a consequence of not complying with what you say
23 is Congress' demand? It's not a bonus. That's not -- it's
24 a signing bonus, but it's not the type of bonus they're
25 talking about here. It's to come onboard, to join the

1 company. I mean, you'd leave them with nobody.

2 There's no evidence in other words that the
3 bonuses themselves are out of line, which in any event, they
4 would be a pre-petition avoidance action I suppose. Now,
5 the committee was able to negotiate off of those bonuses to
6 some extent, but it's just -- it just -- again, it doesn't
7 fit the statute. It's a pre-petition agreement.

8 It's paid out over time, that's fair, but again,
9 the company does have a choice. They can say, we don't want
10 to pay that amount 'cause we think we can hire someone else
11 for less who can do as good a job or better, but that's not
12 covered by 503. I don't see how this is even within 503.
13 It's a pre-petition agreement, a signing bonus.

14 MR. SCHWARTZBERG: It should be an unfair claim,
15 then, Your Honor.

16 THE COURT: No, it's part of their salary. It's
17 agreed to be paid. Now if -- again, if you want to object
18 to the claim, you can do that, but in the meantime, it's
19 owed. It's part of their -- it's not covered by 503 in
20 other words. It's a pre-petition claim. And I, you know, I
21 suppose they could make the business decision that we don't
22 want to pay that amount and you'll have your claim that's
23 capped under 502(b)(7) I think, but they'd have to hire
24 someone else.

25 There's absolutely no evidence that they could

1 hire someone else who's just as good for less money. So I
2 assume that's the analysis the committee went through, and
3 they got some concessions on those payments, but it's not
4 covered by 503.

5 It's a determination that you make as to whether
6 you want to hire someone new, which I don't think would be
7 covered by 503 either because you're hiring them to come
8 into the company.

9 MR. SCHWARTZBERG: I think 503(c)(3).

10 THE COURT: Well, but it's -- I don't think
11 Congress meant to say that when a company can pay out over
12 time, which saves the company the time value of that money,
13 and that would be barred by 503(c). The company has to pay
14 now the full amount. It doesn't compute. I mean that's --
15 Congress could not have possibly wanted that. It's worse
16 for everybody.

17 MR. SCHWARTZBERG: I won't beat a dead horse, Your
18 Honor. Thank you.

19 THE COURT: Okay. All right. I mean I -- look, I
20 think it's no longer the case, and nothing that I've heard
21 today changes it that the company engaged in the proper
22 process to determine whether someone was an insider or not.
23 Nothing I've heard today changes that analysis, and I'll
24 rest on my rulings on that point.

25 The U.S. Trustee does not appear to be challenging

1 at this point anything other than the participation of the
2 10 -- or actually it's nine, right, because Dr. Landau's not
3 participating in the LTRIP, and 10 who are participating in
4 the annual incentive plan.

5 The case law is properly briefed by both sides on
6 this point under 503(c) of the bankruptcy code. Congress
7 made it virtually impossible to have a retention plan that
8 involves insiders. It did not, however, make it improper or
9 unauthorized to have an incentive plan that's not primarily
10 retentive. Any form of compensation has some retentive
11 element to it, because if you're unhappy with your
12 compensation, you'll leave if you have another opportunity.

13 But The Courts have made it clear that if a
14 company adopts a proper incentive plan under 503(c) of the
15 bankruptcy code, one reviews that plan as to whether it
16 makes proper business sense to enter into it. And those
17 factors have been well-established and are discussed in the
18 case law dating back to In Re Dana Corp 358BR567576377
19 Bankruptcy SDNY 2006.

20 Is there a reasonable relationship between the
21 plan proposed and the results to be obtained? I.e., is the
22 plan calculated to achieve the desired performance? Is the
23 cost of the plan reasonable in the contacts of debtors'
24 assets, liabilities and earning potential? Is the scope of
25 the plan fair and reasonable? Does it apply to all

1 employees?

2 Does it discriminate unfairly? Is the plan of
3 proposal consistent with industry standards? What was the
4 due diligence efforts of the debtor in investigating the
5 need for such a plan, analyzing which key employees need to
6 be incentivized? What is available and who was generally
7 applicable in a particular industry? And did the debtor
8 receive independent counsel in performing due diligence and
9 then creating and authorizing the incentive compensation?

10 See also In Re Borders Group Inc., 453BR459473,
11 and In Re Global Home Products LLC, 369BR778 Bankruptcy D.
12 Delaware. The statute, of course, doesn't lay this out.
13 This is case law driven, but ultimately I believe the
14 proposed compensation plan needs to be justified in terms of
15 obtaining the results that it's supposed to obtain.

16 And here in addition to the debtors' process of
17 analyzing it, which involved independent counsel, the
18 Compensation Committee of the board, and Watson Towers
19 Perrin's advice, the plans were subject to substantial due
20 diligence by the official unsecured creditors committee and
21 other parties that have a substantial stake in these cases.

22 I believe that Counsel for the committee was being
23 diplomatic in seeing that it was unlikely that without that
24 substantial due diligence they would ever have signed off to
25 this proposal given the context of these cases. And that it

1 was a difficult process for them to get to supporting the
2 revised terms.

3 So-called bonus plans always are a lightning rod
4 in a Chapter 11 case. I think there are probably, in fact,
5 the judge's least favorite litigation in a Chapter 11 case
6 because you have to make very difficult decisions about on
7 the one hand what's necessary for the debtors continued
8 survival and hopefully successful performance, which means
9 have a proper compensation structure, and not favoring
10 employees over others, particularly not favoring insiders
11 over others.

12 In addition, it is inevitable that the press will
13 report these issues in a way that catches people's eye
14 without really getting in depth into the nuances. Any
15 reader of a blog or person that watches a TV segment that
16 says, with a lifted eyebrow, can you believe company X
17 that's in Chapter 11 just got approval of a bonus plan, is
18 going to really enjoy that story because it gets a wonderful
19 reaction, i.e. can you believe that.

20 It's much more nuance than that, and I think the
21 committee properly went through that analysis and obtained,
22 it appears to be, a very fair result. I have had the
23 opportunity to engage in the same analysis with the benefit
24 of the record before me brought out by the U.S. Trustee, and
25 frankly I do not see anything wrong with the committee's

1 approach to this matter.

2 It's been clear since the start of this case that
3 the creditors, who as far as I can see, are in one way or
4 another every person in the United States, own this company.
5 And if they own the company, they need to make sure that it
6 has a proper compensation structure. Because otherwise what
7 they own is going to deteriorate. I believe the committee
8 took that into account.

9 I believe also in the context of these particular
10 cases, which as I just noticed are unique in that almost
11 everyone in the United States is a creditor in some way,
12 shape, or form, one needs to properly address any notion
13 that people are being rewarded for potential misconduct.

14 And as far as the overall treatment here
15 negotiated by the committee is concerned, I think they
16 properly addressed that by making sure that for senior
17 executives and not just insiders there would be no rewards
18 for the pre-2018 period, and that there would be some
19 additional deductions recognizing that it would be some
20 compensation through these plans for the pre-2018 period for
21 lower level employees, but that that would be made up for by
22 deductions from senior levels ones.

23 It appears to me also that the committee properly
24 negotiated a second look, if it turns out that someone was
25 more to blame than we know today.

1 On that score, before I forget, I would change the
2 word open for reconsideration to some term that doesn't
3 argue that this is a rule 60 motion over a rule 59 motion
4 with its own standards. I think it just should be open to
5 the colloquial sense of reconsideration.

6 MR. HUEBNER: Okay. Your Honor, for the record,
7 that's clearly our understanding.

8 THE COURT: I understand, but it's a term that
9 could be read two different ways.

10 MR. HUEBNER: Right. We'll figure out another
11 word, but for the avoidance of doubt we all agree this is
12 not by any 60(b) standard.

13 THE COURT: Right.

14 MR. HUEBNER: It's consideration by the court.

15 THE COURT: Right. And I'm -- beyond that, I
16 compared the wording in the Insys Order to this paragraph,
17 and I'm leaning a little more towards the Insys wording on a
18 lookback. It was attached to one of the joinders. It's
19 paragraph -- what I'm referring to is paragraph eight.

20 MR. PREIS: You mean the severance order.

21 THE COURT: Sorry.

22 MR. PREIS: It was a severance order in Insys.

23 THE COURT: Yes. Yes.

24 MR. PREIS: Okay.

25 THE COURT: Paragraph eight. I'm not saying

1 that's the magic language. I'm still open to discussing
2 that. But I've gone off on a tangent. I -- more than most
3 cases, I think those types of issues which aren't
4 necessarily immediate employee issues, they don't come up in
5 most normal analyses. In fact, the only case I think that
6 they've ever -- those types of issues have come up in is the
7 PG&E case that's cited by the U.S. Trustee.

8 But I don't view these plans as being analogous to
9 the PG&E plans. And I don't view the circumstances upon
10 which they've been proposed and due diligence is similar to
11 the PG&E plan. So while I agree thoroughly with Judge
12 Montali that one element of the analysis here is simply do
13 you need to make this type of payment to get what you're
14 supposedly getting for it.

15 He, I think, from the outside correctly concluded
16 in PG&E you don't. I think here you do given the testimony
17 I received. Because it's essentially salary with some
18 modifications or risks on either side, depending on how you
19 perform and the company performs.

20 So I will overrule the U.S. Trustee's objection.
21 As far as the signing bonus is concerned, I think I've said
22 enough on that already.

23 That leaves Dr. Landau. And I guess I got to give
24 that objection -- 'cause I -- pretty sure I said at the
25 beginning of this ruling that I'm looking at these plans

1 separate and apart from Dr. Landau.

2 MR. TROOP: Thank you, Your Honor. Andrew Troop
3 from Pillsbury again on behalf of the non-consenting states
4 or dissenting states. At some point we'll agree.

5 Your Honor, with The Court's indulgence I'm going
6 to talk about a few overall issues.

7 THE COURT: I'm sorry. Can I interrupt you one --

8 MR. TROOP: Of course.

9 THE COURT: I apologize.

10 MR. TROOP: No problem, Your Honor.

11 THE COURT: I always seem to be interrupting you,
12 and I apologize for that, but I don't want to forget this.
13 One individual, I think he's a former employee, filed a
14 letter, and he filed a follow-up letter where he says he
15 would like to get paid severance. That's not before me
16 today, but he expressed a concern, which I believe is
17 unfounded.

18 I just want confirmation of this, that part of the
19 agreement between the debtors and the Creditors' Committee
20 is that the debtor would be abolishing severance.

21 MR. HUEBNER: So, Your Honor, just to help --

22 THE COURT: That's not -- I'm not being asked to
23 approve that today, am I?

24 MR. HUEBNER: No, there were two letters on the
25 docket. One was a gentleman named Dan Colucci, whose issue

1 was that he believes he had done work after leaving that was
2 improperly characterized as severance. We fixed that three
3 hearings ago, and we actually paid him, and that's resolved.

4 And the second letter, we actually discussed that
5 briefly in one of the hearings, if my memory is right. The
6 second letter, which I think is the one you're referring to
7 by John Taromina, is just lamenting the fact that the
8 Creditors' Committee would not agree, and therefore it's not
9 in a relief we are seeking for us to pay severance to people
10 who had left the debtors' employer prior to the petition
11 date.

12 THE COURT: Okay.

13 MR. HUEBNER: We're also not paying LTRIP to
14 people who left prior to the petition date and frankly
15 people quite before any of the payment dates because of the
16 re-retentive structure, even people who were here after,
17 they don't get it, so.

18 THE COURT: But this is not something I'm
19 approving. It's just a, it's a fact.

20 MR. HUEBNER: Correct. You ruled on the severance
21 two hearings ago, as we cited Straus-Duparquet --

22 THE COURT: Right.

23 MR. HUEBNER: -- excessively and respectfully --

24 THE COURT: If you leave post-petition.

25 MR. HUEBNER: Correct.

1 THE COURT: But said differently, if someone is
2 entitled to severance because they left pre-petition, they
3 will have a claim for that.

4 MR. HUEBNER: Correct.

5 THE COURT: And your deal with the committee is
6 not that those claims are to be disallowed.

7 MR. HUEBNER: No, no, of course they have a claim.

8 THE COURT: Okay. All right.

9 MR. HUEBNER: We're just -- we're not paying it
10 currently.

11 THE COURT: I just wanted the record to be clear
12 on that.

13 MR. HUEBNER: Yes, Your Honor.

14 THE COURT: Okay. Sorry. Go ahead.

15 MR. TROOP: No problem, Your Honor. Your Honor,
16 with your indulgence, and we promise to be brief, very brief
17 between us, Ms. Feiner and I are going to split up this
18 closing argument.

19 Your Honor, first of all, I think it's -- I think
20 I'm stating the obvious here when I say that like the
21 committee, the dissenting states went through their own
22 diligence process and also considered carefully the
23 concessions of the Creditors' Committee was able to
24 negotiate, and for rank and file employees it was -- I think
25 give is the wrong word, Your Honor. It was easy not to

1 maintain an objection with regard to the payments to rank
2 and file employees.

3 With regard to other senior executives --

4 THE COURT: It was easy once you did the due
5 diligence.

6 MR. TROOP: Exactly, once we did the due
7 diligence.

8 THE COURT: Right. Okay.

9 MR. TROOP: It was not as easy, but with the
10 concessions we were able to get there with regard to more
11 senior executives, except for Mr. Landau. And our objection
12 to Mr. Landau, Your Honor, is a -- it is of a different
13 character in some respects.

14 I start with this, Your Honor, as I think was made
15 clear in my cross-examination of Mr. Lowne. The idea of
16 trying to separate Dr. Landau from the company's pre-2017 or
17 pre-2018 conduct is illusory. He was the president. He was
18 the CEO of Purdue Canada. He was part of this corporate
19 structure, and there's absolutely no evidence, no evidence
20 that he wasn't involved in sales and promotional and
21 marketing evidence then. I just point that out.

22 The second thing, Your Honor, is that --

23 THE COURT: Well, okay. But that's a -- you're
24 stating that in the negative. So sometimes I refer to that
25 as History Channel pleading. You know, there's no evidence

1 that the martians didn't participate in Thanksgiving, you
2 know, those things.

3 MR. TROOP: I'm actually giving up for that, Your
4 Honor, because that's not my burden.

5 THE COURT: Okay. Well, look -- and let me -- if
6 I can reassure you a little bit though. Look, at the senior
7 levels a person's compensation is really sui generis. And
8 it really ties very much to that person. And I think that
9 was brought out in your question of Ms. Gartrell. You know,
10 how do you determine what's mean or median? You may have an
11 absolute all star who's a CEO, and you may have someone
12 who's not.

13 I mean there was I think only one thing that
14 people agreed on in GM at the start of the case, which is
15 the guy who was running GM should go, right. I don't get
16 that sense here. There's a sense that there may be an issue
17 about liability in the future. I understand that point, and
18 I understand the public perception point. I understand that
19 point, too, I think.

20 But to me, particularly if you beef up the
21 language a la the Insys order, I am -- and you recognize
22 that there's the same no-secretion language, which is better
23 than a pre-judgment attachment, which you probably wouldn't
24 be able to get, I'm not sure what more can be said at this
25 point.

1 MR. TROOP: So, Your Honor, then let me just sort
2 of jump right to that point.

3 THE COURT: Okay.

4 MR. TROOP: Okay. Because there are two
5 assumptions embedded in the clawback provision. One Mr.
6 Preis articulated, which is that the stay won't continue
7 voluntarily or involuntarily past April 8, 2020, and
8 therefore parties will be able to pursue claims.

9 THE COURT: Yeah. I didn't really accept that.

10 MR. TROOP: Okay. So, Your Honor --

11 THE COURT: If the case goes well, it should
12 continue.

13 MR. TROOP: And, Your Honor, without predicting
14 how you will rule at that point in time, I would predict
15 that you would rule that way if you think the case is going
16 well. So the point of deferring the payments until after
17 April 8 is potentially illusory. It's -- and given where we
18 are right now --

19 THE COURT: Well, except that, again, you could
20 get it back, that he can't -- that he's agreed that he won't
21 put it off in a bank in Panama or wherever.

22 MR. TROOP: So, Your Honor, that's what takes us
23 to the second assumption, right. And no one's asked you to
24 rule on releases, and I'm not asking you to rule on releases
25 now or not. But the same potential exists in this case if

1 the debtors seek releases for Dr. Landau.

2 THE COURT: Right.

3 MR. TROOP: And then the states will be -- if you
4 enter that order, right, the states will be barred from
5 proving up their claims against Dr. Landau.

6 THE COURT: Right.

7 MR. TROOP: Right.

8 THE COURT: It'll be a choice that they will have
9 to make whether they want to oppose that order or not, that
10 request.

11 MR. TROOP: But, Your Honor, then are we prepared
12 to agree now, and I think we're not, right, that -- or if we
13 are, maybe I would think about this differently, right, that
14 ultimately our release against Mr. Landau is going to have
15 to be consensual.

16 THE COURT: No, but you know how hard it is to get
17 a non-consensual release in the Second Circuit, but it's not
18 impossible.

19 MR. TROOP: Well, true. Your Honor, so in
20 asking --

21 THE COURT: But you could certainly take discovery
22 as part of that as to whether there's some reason beyond
23 what I read in the complaint, and I did read that the
24 complaint and the two rulings by the Massachusetts Court --
25 I have that information. That's all I have right now as far

1 as, you know, potential liability, and taking discovery in a
2 State Court action isn't the only way you can get discovery.
3 You can certainly take discovery as part of a release
4 dispute in connection with a confirmation hearing.

5 MR. TROOP: I'll take that as a ruling in favor of
6 discovery at that time in --

7 THE COURT: Well, you have that right. You have
8 the right to do that.

9 MR. TROOP: All right. But, now, Your Honor, and
10 I'm not trying to be difficult, but when I was -- it doesn't
11 matter. I hear you, Your Honor. But it does potentially
12 mean that a clawback is illusory and that payments will be
13 made to someone who was a bad actor.

14 THE COURT: Well --

15 MR. TROOP: And that --

16 THE COURT: We don't know that today, though, by
17 any means.

18 MR. TROOP: No, Your Honor. We don't know it, but
19 the question is, if we don't know it and we set up a system
20 where there is a potential, it will never be known.

21 THE COURT: Well, that I don't understand.
22 Because, again, you have, you know, I think this would come
23 to a head first in connection with plan confirmation, and
24 you could take your discovery then. But can I jump ahead,
25 because I --

1 MR. TROOP: Sure.

2 THE COURT: While this aspect of your argument
3 didn't move me that much just based on the record. I mean,
4 you know, if -- again, every senior executive is different.
5 The impression I get of Mr. Landau, just based on today's
6 record, is that, you know, he -- there's no impediment to
7 him running this company at this point as the CEO under all
8 the supervision that he's under.

9 I'm more inclined or more favorably inclined to
10 your argument that if you just look again at the purpose of
11 the AIP and whether it's buying what it's supposed to buy,
12 it doesn't meet that test, and that's based upon two things.
13 One of which I think is taken care of by the committee
14 settlement, which is that the AIP is reduced by 50 percent,
15 which to my mind I don't know why -- I wasn't there for
16 renegotiations obviously, but if the base salary upon which
17 it's calculated was doubled in 2018, that would help to
18 argue why it would be -- the AIP would be reduced or cut in
19 half. I understand that.

20 I think that there's a logic there. Now, it may
21 be that that wasn't in anyone's mind, and Dr. Landau just
22 said I'm willing to take less because I'm the CEO and you
23 lead from the top. That's possible, too.

24 But there's 6 million dollars accelerated, and,
25 you know, depending on whether you earn 5 percent or 10

1 percent or 25 percent, which is what last year's stock
2 market earned, that acceleration is more than the million
3 three, which is an issue here, which you're objecting to.

4 MR. TROOP: Yes, Your Honor.

5 THE COURT: So in terms of this year's AIP, I
6 think that I don't have the type of record that I have with
7 everyone else that first of all this wasn't clear to me.
8 Ms. Gartrell's chart actually focuses on the post-Creditors'
9 Committee deal. It doesn't reflect the 6 million, and she
10 says, well, we never reflect retention payments, but the
11 purpose of the retention payment is to stay, but it's been
12 accelerated. So it's not really a retention payment.

13 To me that raises serious issues as to whether
14 under the Dana II standard I should approve this because it
15 actually, to me, takes it without the additional AIP for
16 2019 into the median or mean.

17 MR. TROOP: I don't need to say the rest.

18 THE COURT: Well, I think that was your argument,
19 right?

20 MR. TROOP: Yes, it was, Your Honor.

21 THE COURT: And it didn't really become clear --
22 it didn't come clear, and I mean this is -- I need to hear
23 from the debtors on this, but it didn't come clear to me
24 until the factual record was developed because the objection
25 just said we understand there was a change in the

1 compensation, and I didn't know how much. I didn't know --
2 I had the issues on Ms. Gartrell's declaration as to what
3 she was comparing and anyway.

4 So I am looking at this, Mr. Huebner as there is a
5 background sense in how this company is perceived today is
6 important, and in that sense I think it's worth including
7 this in the analysis under the Dana case and other cases
8 that it may turn out that Dr. Landau has some cloud over
9 here. It's not here today as far as I can see other than
10 just the fact that he was at the company, you know, in a
11 fairly high position.

12 To me, that wouldn't -- all other things
13 considered, that would not, I think, ultimately change the
14 reaction. I mean, it's the heat that I would have to take,
15 that the committee would have to take, that anyone would
16 have to take who's not objective. That look, when you look
17 at this on the facts, you need to have a CEO who's properly
18 compensated.

19 And no one is saying he's the type of CEO that
20 just has to go. We're not happy with him. I don't hear
21 that. So while it's in the background, I don't think it's
22 anywhere close to being dispositive, particularly given that
23 you protect the company and the creditors as the order
24 would.

25 But I do have concerns about how the compensation,

1 in light of the acceleration of the retention amounts and
2 the increase in the salary, the base salary, although I
3 think that's already addressed relates to Ms. Gartrell's
4 testimony. So that's one of my questions for you --

5 MR. TROOP: Your Honor, I believe Ms. Feiner is --
6 we decided she's not going to --

7 THE COURT: Okay.

8 MR. TROOP: And, thank you.

9 THE COURT: Okay.

10 MR. HUEBNER: Your Honor, these are all the right
11 questions, and I'm hoping that I'm going to have some
12 hopefully relatively to pretty convincing answers.

13 THE COURT: Okay.

14 MR. HUEBNER: Number one, I do want to note that
15 it was really -- to say that there was minimal notice to us
16 as the movant that this would be the gravamen of today's
17 hearing would be an understatement. As Your Honor knows,
18 this was sort of the last paragraph mentioned in the 2018
19 changes in passing, but it's still my burden and I'm not
20 complaining.

21 I'm just saying, have they actually called us and
22 said Marshall, can we talk about this. We want to
23 understand what happened in 2018. We actually would have
24 had a full record, or frankly as an objector, although it's
25 strange to say this, have they actually asked for a

1 discovery, they would have had a full record.

2 THE COURT: Okay.

3 MR. HUEBNER: So let me explain what actually
4 happened.

5 THE COURT: Well, could I -- look, I'm happy to
6 adjourn this one portion and you could have those
7 discussions.

8 MR. HUEBNER: Well, Your Honor --

9 THE COURT: 'Cause one thing I want to be clear
10 about is that even at a senior level, there's no more senior
11 person in this company than the CEO and the board members.
12 I'm always uncomfortable, I think all bankruptcy judges are,
13 in getting into the details of people's compensation. You
14 know, at some level those are important to a company, but --

15 MR. HUEBNER: Right. Right. But, Your Honor --

16 THE COURT: They raise all sorts of issues that
17 don't need to be raised.

18 MR. HUEBNER: Right.

19 THE COURT: And I'm happy to adjourn it so you
20 could have those discussions.

21 MR. HUEBNER: Yeah. So, Your Honor, I think for
22 kind of integrity purposes, because, in fact, there was
23 implicit testimony, in fact, about the 6 million in 2018
24 that's actually not correct and is, in fact, misleading. I
25 actually need to correct the record from the podium.

1 THE COURT: Okay.

2 MR. HUEBNER: Because it's actually important.

3 And, again, had they asked, they would have known what
4 happened, and then they wouldn't have said things that, in
5 fact, are not, in fact, quite right at all.

6 THE COURT: Okay.

7 MR. HUEBNER: So what actually happened is that
8 before Davis Polk was involved, in March 2018, Dr. Landau
9 was prepaid 6 million dollars of retention. So another
10 insinuation in their pleading that appears three times,
11 three months after Davis Polk was retained, ta da, the
12 bankruptcy lawyers worked this out, is false.

13 So we inherited a situation where he had already
14 been paid 6 million dollars of retention. In the middle of
15 2018, Dr. Landau went to the board and said, in light of
16 where all of this is going, these numbers make my base
17 salary and my target bonus -- don't -- they're just not
18 fair. They're not reasonable. They don't work. I'm
19 terribly undercompensated. My words not his, to be clear,
20 and probably injudicious words. I am undercompensated.

21 And, in fact, if you look at the study that you
22 have in front of you, there's no question that that's true
23 because even the 25th percentile at the median is 3.5.

24 COURT REPORTER: There's 6 million dollars.

25 MR. HUEBNER: Your Honor, I'm getting there. I

1 understand the questions at bar, and I'm going to address
2 them.

3 THE COURT: Okay.

4 MR. HUEBNER: Right. So the 6 million had already
5 been paid. What happened in June 2018 when we were involved
6 was that there was a much more fundamental restructure of
7 his contract. And the 6 million that was already paid,
8 'cause it was already paid, he got it in March without our
9 involvement, was allocated to one time period. His overall
10 retention payments for the period that was measured,
11 actually went down by 2 million dollars.

12 But much more importantly or equally importantly,
13 his termination payment, what would happen if he was
14 terminated -- 'cause bankruptcy was by no means a known
15 certainty in June of 2018, actually went down by over 7
16 million dollars. Because the original constructs actually,
17 which is not unusual at all in my experience, had an
18 acceleration of all remaining retention payments if someone
19 is terminated. 'Cause you know, you promise them this is
20 where you're going to get to stay, but if we fire you
21 without cause, you get it.

22 So Dr. Landau actually gave back, again, based on
23 the contract before we were on scene multiple millions of
24 dollars. So then you get to the base fact, which remains,
25 which I'm going to address right now, which is that's

1 interesting and that's something with a very different
2 complexion than sort of the clever bankruptcy lawyers
3 slipped Dr. Landau 6 million dollars, which is completely
4 false and really without foundation and inappropriate.

5 What actually happened was that -- and then you
6 say, well, now let's look at the numbers again. And let's
7 actually do it -- even though the testimony, 'cause there
8 was evidence on this, is that you look at the period. You
9 don't allocate it to what year, but let's just do that.
10 Let's assume arguendo, as they would have you do, that you
11 allocate all 3 million dollars of half of the retention
12 payment to 2019 alone.

13 And you say, well, I want to take the chart on
14 page 18 of the Gartrell declaration that with the UCC deal
15 has them at 394, and I just want to add proforma 3 million
16 to it, 'cause that's the allocable amount for 2019, 'cause
17 the 6 million covers 2019 and 2020. Understood, let's do
18 the math.

19 So 394 of total comp becomes in the objector's
20 mind 694 total comp.

21 THE COURT: But he got 6 million.

22 MR. HUEBNER: Correct. And to cover -- and he has
23 to give it back. If he leaves before the end of 2020, he
24 has to give back half of it. If he leaves before the end of
25 this year, which is obviously not happening, and he has to

1 give back the other half if he leaves before the end of next
2 year.

3 THE COURT: And I -- look, I appreciate you
4 wanting to correct the facts, and you've done that. Right
5 now, I think, it would really benefit for people sitting
6 down and going over this in private as opposed to doing --

7 MR. HUEBNER: Sure.

8 THE COURT: -- the math on the fly. I think that
9 would be warranted.

10 MR. HUEBNER: Yeah.

11 THE COURT: I think you've made it clear that
12 there is a reasonable belief that this wasn't a grab, you
13 know, an improper grab, but on the other hand, I think it
14 would be worthwhile to get an assessment of how this -- the
15 entire compensation package works. Hopefully, I won't have
16 to do it, that the objector will understand it with your
17 input and we'll reach some result.

18 MR. HUEBNER: Sure. Your Honor, we obviously will
19 always take The Court's lead, and of course, we will go and
20 do that. It's just, I do want to --

21 THE COURT: I just, you know, I want -- I'm sorry.
22 These types of compensation packages, because they're for
23 senior people, are complicated. You know, they're lawyers
24 that spend their whole careers working on these things. And
25 you've given me highlights, but I think it's worth

1 separately going through carefully and -- among other
2 things, the committee has pointed out that I think correctly
3 they added a retentive feature to their deal. I don't know
4 how the waivers and all those tie into timelines for the
5 case, 'cause they don't have Dr. Landau's agreement in front
6 of me. In fact, I didn't even know it existed until about
7 an hour ago.

8 So I think -- and I'm not blaming anyone for that,
9 but I think it's worthwhile for people to go through that.

10 MR. HUEBNER: Your Honor, we will do that without
11 question. I do want to close with this, though, 'cause
12 obviously, you know, the stewardship and the credibility is
13 in --

14 THE COURT: Yeah.

15 MR. HUEBNER: Importance to us. The debtors and
16 the Creditors' Committee went through all these things in
17 detail. And had others called, I'll just make it personal,
18 me personally, I would have been happy to explain it. This
19 all came up for us as much on the fly at this hearing as it
20 did for you, and it also should be noted, as I said at the
21 outset, his give-up is not only 50 percent of the AIP, it's
22 also 100 percent LTRIP.

23 THE COURT: No, I understand. I understand.

24 MR. HUEBNER: And so it's actually 62 percent. So
25 we'll do the numbers, and we'll explain 2018 a little bit

1 better, but there were a series of both factual statements
2 that were just wrong and insinuations that were improper
3 that I thought had to be cleared.

4 THE COURT: Okay.

5 MR. HUEBNER: I do want to note, though, that at
6 the end of the day the objector's primary objection, I think
7 was really to the fact that he is a potential wrongdoer,
8 'cause unlike others he is named. It sounds to me that
9 although you haven't ruled, that that's not the part where
10 The Court is focused.

11 THE COURT: No, it's not.

12 MR. HUEBNER: The structure with potential Insys
13 language changes will address that. Now, we just need to
14 take another run through the numbers.

15 THE COURT: It seems to me, first that I don't
16 have the record before me that would come close to
17 suggesting that there should be some thumb on the scales for
18 Dr. Landau because of past events. It would seem to me that
19 if that were, in fact, the case, there should be a different
20 CEO. I mean ultimately that's what we're talking about. I
21 don't have that sense today. I really don't have that
22 feeling.

23 MR. HUEBNER: And that's why we've asked them
24 multiple times if they have things we should have.

25 THE COURT: Well, all right. But so I think that

1 on the other hand, and this does go to the context point I
2 was taking. That context is always there in this case. And
3 as Mr. Troop said, it's going to come up again when a plan
4 is put before everyone. So it may ultimately be that
5 particularly given the payment pre-petition, it made sense
6 to defer, just to see how the case goes. And maybe you
7 change the severance portion. I don't know.

8 MR. HUEBNER: No, severance is --

9 THE COURT: It's all part of a discussion.

10 MR. HUEBNER: Yeah. Your Honor, we as -- for
11 worse or for better, I think --

12 THE COURT: And I appreciate that Dr. Landau may
13 be a highly talented CEO who could leave tomorrow, that may
14 be the case. I would hope he wouldn't do that, that he took
15 on this task knowing that it's a monumental task and that he
16 could take some real pride in shepherding this company
17 through a bankruptcy case that sends its value out to the
18 claimants.

19 MR. HUEBNER: Right.

20 THE COURT: And that's something that he will be
21 remembered for. I don't think, given what I've heard today,
22 he's going to be suffering, you know, paycheck to paycheck.

23 MR. HUEBNER: That's true, Your Honor.

24 THE COURT: So while these disputes understandably
25 may rub him the wrong way that his integrity is being

1 challenged or the like, it may well make sense to have a
2 larger discussion that may not be ended until months from
3 now.

4 MR. HUEBNER: Yeah. And, Your Honor, to be fair
5 to Dr. Landau, you know, the -- as this hearing amply
6 evidences, it's more than just the potential upside of
7 ultimately being known as the person who oversaw this.
8 Obviously, the news articles that come out tomorrow may well
9 be about the worries or concerns or accusations --

10 THE COURT: I hope that's not the case. I mean, I
11 usually don't even consider how a case is perceived
12 publically, but this is a very public case.

13 MR. HUEBNER: Right.

14 THE COURT: I think that would be a real
15 disservice to the case and to Dr. Landau.

16 MR. HUEBNER: Right. And that --

17 THE COURT: It shouldn't -- that shouldn't be the
18 headline.

19 MR. HUEBNER: Right.

20 THE COURT: The headline should be that the
21 company and the committee and the economic parties of
22 interest were able to agree on 99 percent of the
23 compensation structure of the creditors' company and that
24 issues with respect to Dr. Landau's compensation are being
25 adjourned for further analysis.

1 MR. HUEBNER: Yeah, Your Honor. I, I agree.

2 THE COURT: It's not really, you know --
3 unfortunately, that may not be news, but that's the truth.

4 MR. HUEBNER: Yeah. Well, the truth is not always
5 news, and news is unfortunately not always the truth.

6 THE COURT: Well --

7 MR. HUEBNER: But we will sit down with the folks
8 and walk them through this. And obviously you've asked us
9 to look at the Insys order and change the nomenclature from
10 reconsideration, and so, you know, hopefully we can work
11 this all out.

12 THE COURT: Yeah. I want to enter a new order on
13 the 99 percent. I think you should be submitting that order
14 to me promptly. You don't need to formally settle it.
15 There will probably be a change on it. One paragraph with
16 reservation of rights, you know, as to everybody if
17 someone's found to be -- when I find an order libel in
18 paragraph eight of the Insys severance --

19 MR. HUEBNER: Sure. Well, we'll prepare
20 something.

21 THE COURT: And because I do think that the people
22 whose money was at stake here realized that it's important
23 to clarify to the personnel at this company what they may be
24 getting.

25 MR. HUEBNER: No. And, Your Honor, we need that

1 order unheard. That's an excellent point. I mean, again,
2 for the company's perspective, the employees have watched
3 this motion get adjourned and adjourned and adjourned and --

4 THE COURT: Right.

5 MR. HUEBNER: -- we can only hold them so long
6 with it's coming. So we will prepare a formal order
7 forthwith.

8 THE COURT: Okay.

9 MR. HUEBNER: Thank you, Your Honor.

10 MS. FEINER: May I just a make a very brief point
11 as on the background.

12 THE COURT: Okay.

13 MS. FEINER: My name is Gillian Feiner. I
14 represent the Commonwealth of Massachusetts, and I'm a part
15 of the non-consenting states group.

16 THE COURT: Right.

17 MS. FEINER: First off, I just want to note that
18 we have been meaningfully and constructively engaged. And I
19 think that that's most obviously from the scope of our
20 objection.

21 THE COURT: I agree with that.

22 MS. FEINER: To the extent that suggestions have
23 been made otherwise, I just wanted to clarify the record.

24 THE COURT: I think that's fine.

25 MS. FEINER: Okay. The second point that I wanted

1 to make was that Mr. Huebner, it is true, has asked on
2 numerous occasions for more evidence of Mr. Landau's
3 wrongdoing. In fact, he asked me on at least one occasion
4 for a Landau dossier.

5 I would just note that given where we are, our
6 current posture, we're not, you know, in active litigation
7 in this case, I should not be expected to try my case
8 against Mr. Landau to Judge Huebner.

9 THE COURT: No, but it's really a different -- I'm
10 making a different point, which is if there is some sort of
11 ground swell that Mr. Landau isn't the right person now,
12 today, that should be known to the debtors, not to me. You
13 should discuss it with the debtors first. I, you know, but
14 the record before me doesn't show that. That's all I'm
15 saying.

16 MS. FEINER: Well, I would just make one --

17 THE COURT: And I'm not faulting you for not
18 establishing it.

19 MS. FEINER: I appreciate that. I appreciate
20 that. But I would just make one observation on that point,
21 which is that Purdue has been very silenced in general about
22 the allegations of misconduct against Dr. Landau.

23 THE COURT: Well --

24 MS. FEINER: And that's strangely, I would say
25 inconsistent with the position that it's taken on the

1 Sacklers, as to whom the states have raised the some more
2 allegations. As to the Sacklers, Purdue has committed
3 publically to take very seriously the allegations of
4 deceptive conduct, and even appointed a special committee of
5 the board to handle all of the Sackler-facing issues.

6 As to Dr. Landau, Purdue has been silent and now
7 asks for your permission to give a bonus. So I mean there's
8 just an inconsistency that at least I view as somewhat
9 difficult to square. That's the only other point that I
10 want to make, Your Honor, because it's clear that you
11 understand the issues, relates to the document that Mr.
12 Huebner referenced, that we cite in our complaint.

13 He made mention of it that it was subject to a
14 protective order. That's Purdue's document. At any
15 point -- Purdue has made on numerous occasions that we've
16 cherry-picked documents, that we've taken things out of
17 context. In the context that the motions are dismissed,
18 they made these arguments. At every point they have
19 resisted making any of their documents public. They're
20 their documents. They can publish them.

21 THE COURT: Well, look, I don't know. Is this one
22 of -- is this my protective order or someone else's
23 protective order?

24 MS. FEINER: It's every protective order in place
25 and every piece of litigation by Purdue. In our case, it's

1 the Massachusetts protective order and the RDL [ph]
2 protective order. Those issues were overseen by both of
3 those --

4 THE COURT: -- there must be some process for --

5 MS. FEINER: It's their documents.

6 THE COURT: -- my protective orders there's a
7 process. If someone wants to use a document, they ask
8 permission.

9 MS. FEINER: So the point that I'm making not only
10 is that we went through that process in connection with our
11 complaint and we were completely appropriate in the way that
12 we used the documents and quoted them, but that if Purdue
13 has a concern about the fact that we have taken something
14 out of context, at any time they can choose to publish the
15 entire document.

16 THE COURT: All right. But this is, again, this
17 is not -- it isn't affecting my ruling one way or the other.

18 MS. FEINER: I appreciate that, Your Honor, but if
19 it's being said on the record, I feel that it needs to be
20 corrected.

21 THE COURT: Okay.

22 MS. FEINER: Thank you.

23 THE COURT: Okay.

24 MS. IMES: Your Honor, we have --

25 THE COURT: Okay.

1 MS. IMES: I apologize. I'm Linda Imes. I am
2 counsel for Dr. Landau.

3 THE COURT: Yes.

4 MS. IMES: And I would really appreciate your
5 indulgence. I know it's a late hour, and I apologize for
6 that, but I'd like to be heard on behalf of Dr. Landau if I
7 may.

8 THE COURT: okay.

9 MS. IMES: So to start out with, I've heard where
10 your ruling is headed and what you've asked the parties to
11 do, but I do want to address some of the things that have
12 been said. You know, this is just -- it's a wages motion,
13 right? And Dr. Landau is being frankly dragged through the
14 mud here in some respects.

15 THE COURT: I don't -- look --

16 MS. IMES: I know you don't see it that way, Your
17 Honor, but if I may just speak and address it.

18 THE COURT: Okay.

19 MS. IMES: There are two things I wanted to convey
20 to you. I want to talk a little bit about who this guy is
21 that we're talking about, and secondly, I just want to
22 briefly address the allegations.

23 I know you've already said those are in the
24 background, and I appreciate that, but I'd like to put them
25 even further in the background if I may. So we disagree,

1 Your Honor, in the strongest possible terms with the non-
2 consenting states characterization of him.

3 The picture they paint of Dr. Landau really
4 couldn't be further from the truth. He's a good and
5 honorable man. And just as a little bit of background about
6 why is this guy the CEO right now, the reason is pretty
7 simple. He's a physician by training, a career-long
8 interest in treating pain. He got his medical degree from
9 Mount Sinai. He did his registry in anesthesiology at Yale,
10 and he has served in the U.S. Army Reserve Medical Corps
11 between 1992 and 2006, including providing pain management
12 for troops.

13 And I want to just talk about, you know, the nub
14 of the complaints that the two AGs and these other
15 complainants have brought are all circling on the sale of
16 opioids. And in that context I want to just inform The
17 Court that during the time that Dr. Landau worked in the
18 United States for Purdue, which was between 1999 and 2013,
19 in that entire timeframe his work was on the clinical
20 research and medical side. He was basically a doctor
21 developing medicines.

22 The sales side was not his responsibility,
23 notwithstanding what the allegations in some of these
24 complaints say where they just lump him together with 20
25 other people for a 20-year timeframe. And I think that's

1 important for The Court to understand in connection with
2 weighing the allegations.

3 Just quickly I want to talk a little bit about the
4 allegations. The allegations in these complaints have not
5 been proven in any court, in any jurisdiction. In every
6 single one of the complaints Dr. Landau was being lumped
7 together with others over a long period of time. We
8 vigorously dispute the allegations. The complaints are
9 deeply flawed.

10 They deploy improper group pleading, and they use
11 conclusory allegations without specifics about Dr. Landau,
12 and they repeatedly mischaracterize underlying evidence,
13 which is profoundly unfair to Dr. Landau. None of them
14 contain well-pled substantiated allegations demonstrating
15 that Dr. Landau participated in wrongdoing whatsoever.

16 And I realize what you said about those being in
17 the background, but I think it's important context for you
18 to have.

19 And finally, with regard to the document that my
20 colleague here and also Mr. Huebner referred to earlier,
21 there's an important point about this document, which is
22 that the rationale behind the statement in that document was
23 to ensure that patients who required paid medicines would
24 have access in the face of manufacturers dropping out of the
25 business.

1 And part of Dr. Landau's proposal was, in fact, to
2 interface with the FDA on that and also to do what
3 ultimately happened, which was to curtail and completely
4 eliminate the sales force that Purdue had.

5 So that's the person, the human being that we're
6 talking about here. And when you made the reference to --
7 you know, you said some CEOs are stars and others are not,
8 Dr. Landau is a star, and he is a star that Purdue should
9 have working for it during this incredibly challenging time.
10 Because of his long tenure there, he has the confidence of
11 its employees where retention is an ongoing problem.

12 Your Honor, I'm so grateful for your letting me
13 speak. If you don't have -- oh, I wanted to also reference
14 just before I forget that if you want to go back to Dr.
15 Landau's background, Schedule 10 of the original affidavit
16 has his whole bio in there. You can find out exactly what
17 he's all about.

18 Again, I appreciate your time, and apologize for
19 being the last one to speak.

20 THE COURT: Okay.

21 MS. IMES: Presumably the last one to speak,
22 anyway.

23 THE COURT: That's fair.

24 MS. IMES: Thank you.

25 THE COURT: All right. So I think you should

1 circulate the proposed order to the usual suspects, and then
2 you could email it to Chambers. And just get -- I don't
3 think I need any more evidence on this. I just -- unless
4 the parties want to have more evidence on the remaining open
5 issue. I'm just -- I'm hoping that the parties can have a
6 discussion and come to some resolution on it frankly.

7 It's clear to me that the economic terms of Dr.
8 Landau's compensation are complex and really not appropriate
9 to bring out on the fly today. And hopefully they can be
10 gone through with a resolution that given the record today
11 would not need an additional hearing.

12 MR. HUEBNER: Your Honor. We will certainly
13 engage the remaining objectors on that.

14 THE COURT: Okay. All right. We're done.
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

RULINGS

Page Line

Jon Lowne Supplemental Declaration [ECF No. 236]

Granted 43 21

Josephine Gartrell Declaration

Granted 77 18

C E R T I F I C A T I O N

I, Lorie Cook, certified that the foregoing transcript
is a true and accurate record of the proceedings.

Lorie Cook

Digitally signed by Lorie Cook
DN: cn=Lorie Cook, o, ou,
email=digital@veritext.com, c=US
Date: 2019.12.09 15:56:11 -05'00'

Lorie Cook

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 9, 2019